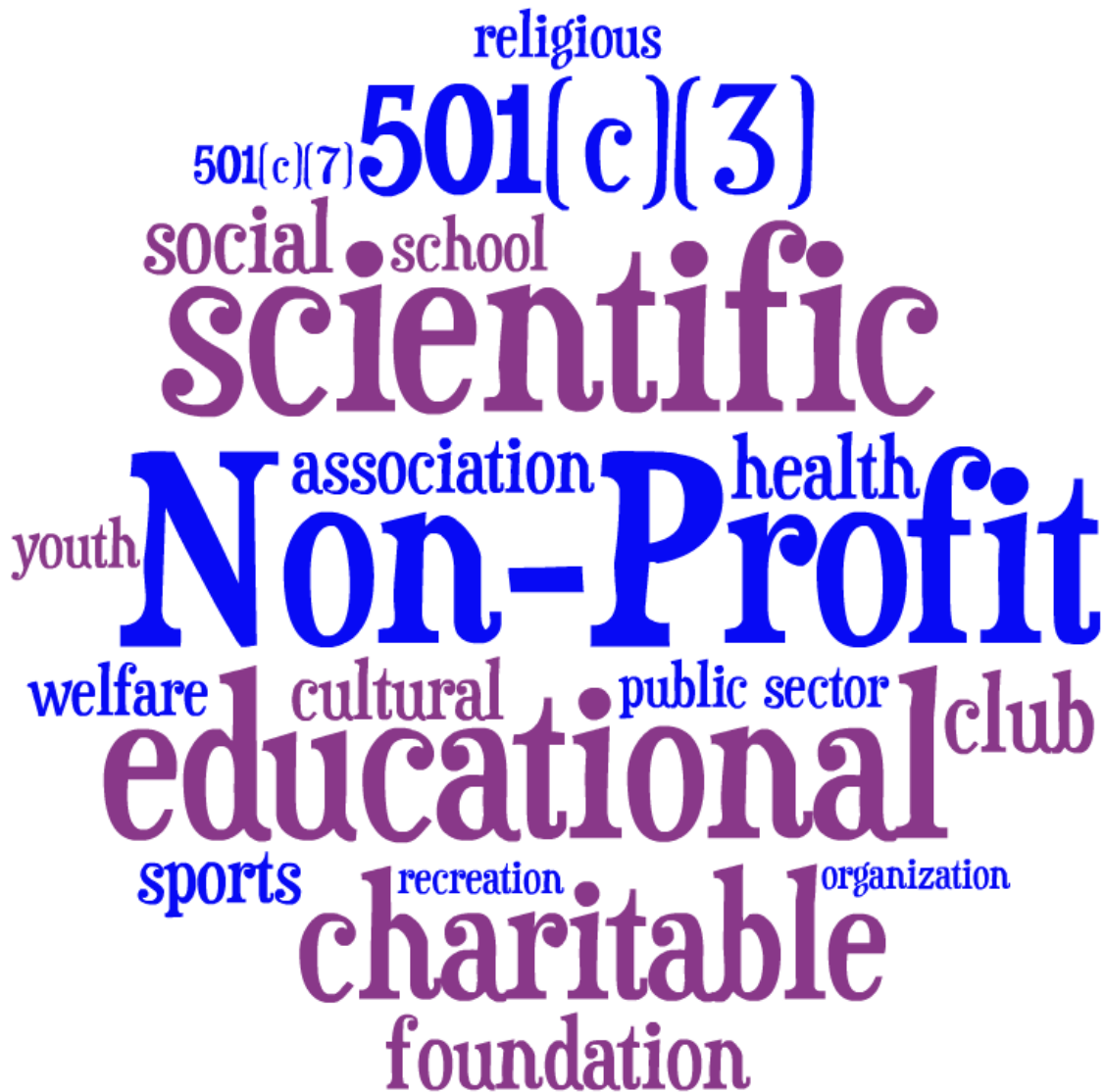


# ILLINOIS GENERAL NOT FOR PROFIT CORPORATION ACT OF 1986

With amendments through July 1, 2013



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# ILLINOIS GENERAL NOT FOR PROFIT CORPORATION ACT OF 1986

## ARTICLE 1. GENERAL PROVISIONS

### Sec. 101.01. Short title.

This Act shall be known and may be cited as the "General Not For Profit Corporation Act of 1986".

*(Source: P.A. 84-1423.)*

### Sec. 101.05. Powers of Secretary of State.

The Secretary of State shall have the power and authority reasonably necessary to administer this Act efficiently and to perform the duties therein imposed.

*(Source: P.A. 84-1423.)*

### Sec. 101.10. Forms, execution, acknowledgment and filing.

(a) All reports required by this Act to be filed in the office of the Secretary of State shall be made on forms which shall be prescribed and furnished by the Secretary of State. Forms for all other documents to be filed in the office of the Secretary of State shall be furnished by the Secretary of State on request therefor, but the use thereof, unless otherwise specifically prescribed in this Act, shall not be mandatory.

(b) Whenever any provision of this Act specifically requires any document to be executed by the corporation in accordance with this Section, unless otherwise specifically stated in this Act and subject to any additional provisions of this Act, such document shall be executed, in ink, as follows:

(1) The articles of incorporation shall be signed by the incorporator or incorporators.

(2) All other documents shall be signed:

(i) By the president, a vice-president, the secretary, an assistant secretary, the treasurer, or other officer duly authorized by the board of directors of the corporation to execute the document; or

(ii) If it shall appear from the document that there are no such officers, then by a majority of the directors or by such directors as may be designated by the board; or

(iii) If it shall appear from the document that there are no such officers or directors, then by the members, or such of them as may be designated by the members at a lawful meeting; or

(iv) If the corporate assets are in the possession of a receiver, trustee or other court-appointed officer, then by the fiduciary or the majority of them if there are more than one.

(c) The name of a person signing the document and the capacity in which he or she signs shall be stated beneath or opposite his or her signature.

(d) Whenever any provision of this Act requires any document to be verified, such requirement is satisfied by either:

(1) The formal acknowledgment by the person or one of the persons signing the instrument that it is his or her act and deed or the act and deed of the corporation, as the case may be, and that the facts stated therein are true. Such acknowledgment shall be made before a person who is authorized by

the law of the place of execution to take acknowledgments of deeds and who, if he or she has a seal of office, shall affix it to the instrument; or

(2) The signature, without more, of the person or persons signing the instrument, in which case such signature or signatures shall constitute the affirmation or acknowledgment of the signatory, under penalties of perjury, that the instrument is his or her act and deed or the act and deed of the corporation, as the case may be, and that the facts stated therein are true.

(e) Whenever any provision of this Act requires any document to be filed with the Secretary of State or in accordance with this Section, such requirement means that:

(1) The original signed document, and if in duplicate as provided by this Act, one true copy, which may be signed, or carbon or photocopy shall be delivered to the office of the Secretary of State.

(2) All fees and charges authorized by law to be collected by the Secretary of State in connection with the filing of the document shall be tendered to the Secretary of State.

(3) If the Secretary of State finds that the document conforms to law, he or she shall, when all fees and charges have been paid as in this Act prescribed:

(i) Endorse on the original and on the true copy, if any, the word "filed" and the month, day and year thereof;

(ii) File the original in his or her office;

(iii) (Blank); and

(iv) If the filing is in duplicate, he or she shall return the copy to the corporation or its representative.

(f) If another Section of this Act specifically prescribes a manner of filing or executing a specified document which differs from the corresponding provisions of this Section, then the provisions of such other Section shall govern.

*(Source: P.A. 96-1121, eff. 1-1-11.)*

### **Sec. 101.11. Electronic filing.**

Documents or reports submitted for filing electronically must include the name of the person making the submission. The inclusion shall constitute the affirmation or acknowledgement of the person, under penalties of perjury, that the instrument is his or her act and deed or the act and deed of the corporation, as the case may be, and that the facts stated therein are true. Compliance with this Section shall satisfy the signature provisions of Section 101.10 of this Act, which shall otherwise apply.

*(Source: P.A. 95-368, eff. 8-23-07.)*

### **Sec. 101.15. Statement of correction.**

(a) Whenever any instrument authorized to be filed with the Secretary of State under any provision of this Act has been so filed and, as of the date of the action therein referred to, contains any misstatement of fact, typographical error, error of transcription or any other error or defect, or was defectively or erroneously executed, such instrument may be corrected by filing, in accordance with Section 101.10 of this Act, a statement of correction.

(b) A statement of correction shall set forth:

- (1) The name or names of the corporation or corporations and the State or country under the laws of which each is organized.
- (2) The title of the instrument being corrected and the date it was filed by the Secretary of State.
- (3) The inaccuracy, error or defect to be corrected and the portion of the instrument in corrected form.

(c) A statement of correction shall be executed in the same manner in which the instrument being corrected was required to be executed.

(d) The corrected instrument shall be effective as of the date the original instrument was filed.

(e) A statement of correction shall not:

- (1) Effect any change or amendment of articles which would not in all respects have complied with the requirements of this Act;
- (2) Take the place of any document, statement or report otherwise required to be filed by this Act;
- (3) Affect any right or liability accrued or incurred before such filing, except that any right or liability accrued or incurred by reason of the error or defect being corrected shall be extinguished by such filing if the person having such right has not detrimentally relied on the original instrument;
- (4) Alter the provisions of the articles of incorporation with respect to the corporation name or purpose or the names and addresses of the incorporators or initial directors;
- (5) Alter the provisions of the application for authority of a foreign corporation with respect to the corporation name;
- (6) Alter the provisions of the application to adopt or change an assumed corporate name with respect to the assumed corporate name; or
- (7) Alter the wording of any resolution which was in fact adopted by the board of directors or by the members entitled to vote.

*(Source: P.A. 93-59, eff. 7-1-03.)*

#### **Sec. 101.20. Certificates and certified copies of certain documents to be received in evidence.**

All certificates issued by the Secretary of State in accordance with the provisions of this Act and all copies of documents filed in the Secretary's office in accordance with the provisions of this Act when certified by him or her, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Secretary of State under the Great Seal of the State of Illinois, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

*(Source: P.A. 84-1423.)*

**Sec. 101.25. Lists of corporations; exchange of information.**

(a) The Secretary of State shall include in his or her daily publication lists of business corporations formed on that day as provided in paragraph (1) of subsection (b) of Section 1.25 of the Business Corporation Act of 1983 all not-for-profit corporations formed on the day of publication of such lists.

(b) The Secretary of State shall include among information to be exchanged with the Department of Healthcare and Family Services, as provided in subsection (c) of Section 1.25 of the Business Corporation Act of 1983, information regarding all not-for-profit corporations formed pursuant to this Act.

*(Source: P.A. 95-331, eff. 8-21-07.)*

**Sec. 101.30. Abstract of corporate record.**

(a) The Secretary of State may, upon receipt of a written request and payment of a fee as determined by the Secretary, furnish to the person or agency so requesting an abstract of the corporate record of any domestic or foreign corporation licensed to conduct affairs in the State of Illinois. All requests for abstracts shall be made in the manner and the form prescribed by the Secretary of State.

(b) The Secretary of State may certify an abstract of a corporate record upon written request therefor. The fee for such certification shall be \$5 in addition to the fee required for furnishing an abstract of record as provided herein. Such certification shall be made under the signature of the Secretary of State and shall be authenticated by the Seal of his or her office.

(c) The fees provided in this Section for abstracts of corporate records and certifications of abstracts shall not be applicable to any federal, state or local governmental agency requesting such information or certification.

*(Source: P.A. 84-1423.)*

**Sec. 101.35. Interrogatories to be propounded by Secretary of State.**

The Secretary of State may propound to any corporation, domestic or foreign, subject to the provisions of this Act, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable the Secretary to ascertain whether such corporation has complied with all the provisions of this Act applicable to such corporation. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the Secretary of State, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him or her, and if directed to a corporation they shall be answered by the president, vice-president, secretary, or assistant secretary thereof. The Secretary of State need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with the provisions of this Act. The Secretary of State shall certify to the Attorney General, for such action as the Attorney General may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this Act.

*(Source: P.A. 84-1423.)*

**Sec. 101.40. Information disclosed by interrogatories.**

Interrogatories propounded by the Secretary of State and the answers thereto shall not be open to public inspection nor shall the Secretary of State disclose any facts or information obtained therefrom except in so far as official duty may require the same answers to be made public or in the event such interrogatories or the answers thereto as required for evidence in any criminal proceeding or in any other action by the State. Such information disclosed by interrogatories shall be exempt from inspection and copying under "The Freedom of Information Act", certified December 27, 1983, as amended.

*(Source: P.A. 84-1423.)*

**Sec. 101.45. Judicial review under the Administrative Review Law.**

If the Secretary of State shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by this Act to be approved by the Secretary of State before the same shall be filed in his or her office, the Secretary shall, within 10 days after the delivery thereof to him or her, give written notice of his or her disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. The decision of the Secretary of State is subject to judicial review under the Administrative Review Law, as now or hereafter amended.

If the Secretary of State shall revoke the certificate of authority to conduct affairs in this State of any foreign corporation, pursuant to this Act, such decision shall be subject to judicial review under the Administrative Review Law, as now or hereafter amended.

Appeals from all final orders and judgment entered by the circuit court under this section in review of any ruling or decision of the Secretary of State may be taken as in other civil actions by either party to the proceeding.

*(Source: P.A. 84-1423.)*

**Sec. 101.50. Administrative Procedure Act.**

The Illinois Administrative Procedure Act is expressly adopted and incorporated herein as if all of the provisions of that Act were included in this Act, except that the provision of subsection (d) of Section 10-65 of the Illinois Administrative Procedure Act which provides that at hearing the licensee has the right to show compliance with all lawful requirements for retention, continuation or renewal of the license is specifically excluded. For the purposes of this Act the notice required under Section 10-25 of the Illinois Administrative Procedure Act is deemed sufficient when mailed to the last known address of a party.

*(Source: P.A. 88-45.)*

**Sec. 101.55. Certain powers reserved to General Assembly.**

(a) The General Assembly shall at all times have power to prescribe such provisions and limitations as it may deem advisable, which provisions and limitations shall be binding upon any and all corporations, domestic or foreign, subject to the provisions of this Act, and the General Assembly shall have power to amend, repeal, or modify this Act at its pleasure.

(b) The Secretary of State shall have the power to promulgate, amend or repeal rules and regulations deemed necessary to efficiently administer this Act. The rules and regulations adopted by the Secretary of State under this Act shall be effective in the manner provided for in "The Illinois Administrative Procedure Act", approved September 22, 1975, as amended.

*(Source: P.A. 85-1269.)*

**Sec. 101.60. Effect of repeal of prior law on rights accrued or liabilities or penalties incurred.**

The repeal of a law by this Act shall not affect any right accrued or established, or any liability or penalty incurred, under the provisions of such law, prior to the repeal thereof.

*(Source: P.A. 84-1423.)*

**Sec. 101.70. Application of Act.**

(a) Except as otherwise provided in this Act, the provisions of this Act relating to domestic corporations shall apply to:

- (1) All corporations organized hereunder;
- (2) All corporations heretofore organized under the "General Not for Profit Corporation Act", approved July 17, 1943, as amended;
- (3) All not-for-profit corporations heretofore organized under Sections 29 to 34, inclusive, of an Act entitled "An Act Concerning Corporations" approved April 18, 1872, in force July 1, 1872, as amended;
- (4) Each not-for-profit corporation, without shares or capital stock, heretofore organized under any general law or created by Special Act of the Legislature of this State for a purpose or purposes for which a corporation may be organized under this Act, but not otherwise entitled to the rights, privileges, immunities and franchises provided by this Act, which shall elect to accept this Act as hereinafter provided; and
- (5) Each corporation having shares or capital stock, heretofore organized under any general law or created by Special Act of the Legislature of this State prior to the adoption of the Constitution of 1870, for a purpose or purposes for which a corporation may be organized under this Act, which shall elect to accept this Act as hereinafter provided.

(b) Except as otherwise provided by this Act, the provisions of this Act relating to foreign corporations shall apply to:

- (1) All foreign corporations which procure authority hereunder to conduct affairs in this State;
- (2) All foreign corporations heretofore having authority to conduct affairs in this State under the "General Not for Profit Corporation Act", approved July 17, 1943, as amended; and
- (3) All foreign not-for-profit corporations conducting affairs in this State for a purpose or purposes for which a corporation might be organized under this Act.

(c) The provisions of subsection (b) of Section 110.05 of this Act relating to revival of the articles of incorporation and extension of the period of corporate duration of a domestic corporation shall apply



to all corporations organized under the "General Not for Profit Corporation Act", approved July 17, 1943, as amended, and whose period of duration has expired.

(d) The provisions of Section 112.45 of this Act relating to reinstatement following administrative dissolution of a domestic corporation shall apply to all corporations involuntarily dissolved after June 30, 1974, by the Secretary of State, pursuant to Section 50a of the "General Not for Profit Corporation Act", approved July 17, 1943, as amended.

(e) The provisions of Section 113.60 of this Act relating to reinstatement following revocation of authority of a foreign corporation shall apply to all foreign corporations which had their authority revoked by the Secretary of State pursuant to Section 84 or Section 84a of the "General Not for Profit Corporation Act", approved July 17, 1943, as amended.

*(Source: P.A. 96-66, eff. 1-1-10.)*

### **Sec. 101.75. Election to Accept Act.**

(a) Any not-for-profit corporation without shares or capital stock heretofore organized under any General Law or created by Special Act of the Legislature of this State, or any corporation having shares or capital stock organized under any General Law or created by Special Act of the Legislature of this State prior to the adoption of the Constitution of 1870, for a purpose or purposes for which a corporation may be organized under this Act, or any corporation formed for religious purposes under An Act Concerning Corporations, effective July 1, 1872, as amended, may elect to accept this Act in the following manner:

(1) Unless the articles of incorporation or the equivalent or the bylaws provide otherwise, where there are members or shareholders entitled to vote, the board of directors shall adopt a resolution recommending that the corporation accept this Act and directing that the question of such acceptance be submitted to a vote at a meeting of the members or shareholders entitled to vote, which may be either an annual or a special meeting. The members or shareholders entitled to vote may elect that such corporation accept this Act by the affirmative vote of at least two-thirds of the votes present and voted either in person or by proxy.

(2) Unless the articles of incorporation or the equivalent or the bylaws provide otherwise, where there are no members or shareholders having voting rights, election to accept this Act may be made at a meeting of the board of directors pursuant to a majority vote of the directors present and voting at a meeting at which a quorum is present.

(b) Upon complying with Subsection (a), the corporation shall execute and file in duplicate a statement, in accordance with Section 101.10 of this Act, and shall also file a copy of its articles of incorporation, if any, and all amendments thereto. Such statement shall set forth:

(1) A corporate name for the corporation that satisfies the requirements of this Act;

(2) The specific purpose or purposes for which the corporation is organized, from among the purposes authorized in Section 103.05 of this Act;

(3) The address of the corporation's registered office and the name of its registered agent at that office;

(4) The names and respective addresses of its officers and directors;

(5) A statement that the attached copy, if any, of the articles of incorporation of the corporation is true and correct;

(6) A statement by the corporation that it has elected to accept this Act and that all reports have been filed and all fees, taxes and penalties due to the State of Illinois, accruing under any Act to which the corporation has theretofore been subject, have been paid;

(7) Where there are members or shareholders having voting rights, a statement setting forth the date of the meeting of the members or shareholders at which the election to accept this Act was made; that a quorum was present at such meeting, and that such acceptance was authorized either by the affirmative vote of at least two-thirds of the votes present and voted either in person or by proxy, or in compliance with any different provision of the articles of incorporation or their equivalent or of the bylaws.

(8) Where there are no members or shareholders having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the election to accept this Act was made, that a quorum was present at such meeting, and that such acceptance was authorized by majority vote of the directors present and voting at such meeting;

(9) A statement that, in addition, the corporation followed the requirements of its articles of incorporation and bylaws so far as applicable in effecting such acceptance;

(10) Where the corporation has issued shares of stock, a statement of such fact, including the number of shares theretofore authorized, the number issued and outstanding; and a statement that all issued and outstanding shares of stock have been delivered to the corporation to be canceled upon the acceptance of this Act by the corporation becoming effective and that from and after the effective date of said acceptance, the authority to issue shares shall be thereby terminated.

(c) When the provisions of Subsection (b) have been complied with, the Secretary of State shall file the statement of acceptance.

(d) Upon the filing of a statement of acceptance, the election of the corporation to accept this Act shall become effective, and such corporation shall have the same powers and privileges, and be subject to the same duties, restrictions, penalties and liabilities as though such corporation had been originally organized hereunder, and shall also be subject to any duty or obligation expressly imposed upon such corporation by its special charter; provided, however,

(1) That no amendment to the articles of incorporation adopted after such election to accept this Act shall release or terminate any duty or obligation expressly imposed upon any such corporation under and by virtue of such special charter, or enlarge any right, power, or privilege granted any such corporation under a special charter except to the extent that such right, power or privilege might have been included in the articles of incorporation of a corporation organized under this Act; and

(2) That in the case of any corporation with issued shares of stock, the holders of such issued shares who surrender them to the corporation to be canceled upon the acceptance of this Act by the corporation becoming effective, shall have such rights as the election to accept this Act provides.

*(Source: P.A. 92-33, eff. 7-1-01.)*

## **Sec. 101.80. Definitions.**

As used in this Act, unless the context otherwise requires, the words and phrases defined in this Section shall have the meanings set forth herein.

- (a) "Anniversary" means that day each year exactly one or more years after:
  - (1) The date of filing the articles of incorporation prescribed by Section 102.10 of this Act, in the case of a domestic corporation;
  - (2) The date of filing the application for authority prescribed by Section 113.15 of this Act in the case of a foreign corporation;
  - (3) The date of filing the statement of acceptance prescribed by Section 101.75 of this Act, in the case of a corporation electing to accept this Act; or
  - (4) The date of filing the articles of consolidation prescribed by Section 111.25 of this Act in the case of a consolidation.
- (b) "Anniversary month" means the month in which the anniversary of the corporation occurs.
- (c) "Articles of incorporation" means the original articles of incorporation including the articles of incorporation of a new corporation set forth in the articles of consolidation or set forth in a statement of election to accept this Act, and all amendments thereto, whether evidenced by articles of amendment, articles of merger or statement of correction affecting articles. Restated articles of incorporation shall supersede the original articles of incorporation and all amendments thereto prior to the effective date of filing the articles of amendment incorporating the restated articles of incorporation. In the case of a corporation created by a Special Act of the Legislature, "Articles of incorporation" means the special charter and any amendments thereto made by Special Act of the Legislature or pursuant to general laws.
- (d) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated.
- (e) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.
- (f) "Corporation" or "domestic corporation" means a domestic not-for-profit corporation subject to the provisions of this Act, except a foreign corporation.
- (g) "Delivered," for the purpose of determining if any notice required by this Act is effective, means:
  - (1) Transferred or presented to someone in person;
  - (2) Deposited in the United States mail addressed to the person at his, her or its address as it appears on the records of the corporation, with sufficient first-class postage prepaid thereon;
  - (3) Posted at such place and in such manner or otherwise transmitted to the person's premises as may be authorized and set forth in the articles of incorporation or the bylaws; or
  - (4) Transmitted by electronic means to the e-mail address, facsimile number, or other contact information appearing on the records of the corporation as may be authorized or approved in the articles of incorporation or the bylaws.

(h) "Foreign corporation" means a not-for-profit corporation as defined and organized under the laws other than the laws of this State, for a purpose or purposes for which a corporation may be organized under this Act.

(i) "Incorporator" means one of the signers of the original articles of incorporation.

(j) "Insolvent" means that a corporation is unable to pay its debts as they become due in the usual course of the conduct of its affairs.

(k) "Member" means a person or any organization, whether not for profit or otherwise, having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

(l) "Net assets," for the purpose of determining the authority of a corporation to make distributions, is equal to the difference between the assets of the corporation and the liabilities of the corporation.

(m) "Not-for-profit corporation" means a corporation subject to this Act and organized solely for one or more of the purposes authorized by Section 103.05 of this Act.

(n) "Registered office" means that office maintained by the corporation in this State, the address of which is on file in the office of the Secretary of State, at which any process, notice or demand required or permitted by law may be served upon the registered agent of the corporation.

(o) "Special charter" means the charter granted to a corporation created by special act of the Legislature whether or not the term "charter" or "special charter" is used in such special act.

(p) Unless otherwise prohibited by the articles of incorporation or the bylaws of the corporation, actions required to be "written", to be "in writing", to have "written consent", to have "written approval" and the like by or of members, directors, or committee members shall include any communication transmitted or received by electronic means.

*(Source: P.A. 96-649, eff. 1-1-10.)*

## **ARTICLE 2. FORMATION OF CORPORATIONS**

### **Sec. 102.05. Incorporators.**

One or more incorporators may organize a corporation under this Act. Each incorporator shall be either a corporation, domestic or foreign, whether not for profit or otherwise, or a natural person of the age of 18 years or more.

*(Source: P.A. 84-1423.)*

### **Sec. 102.10. Articles of Incorporation.**

The articles of incorporation shall be executed and filed in duplicate in accordance with Section 101.10 of this Act.

(a) The articles of incorporation must set forth:

(1) A corporate name for the corporation that satisfies the requirements of this Act;

(2) The specific purpose or purposes for which the corporation is organized, from among the purposes authorized in Section 103.05 of this Act;

- (3) The address of the corporation's initial registered office and the name of its initial registered agent at that office;
  - (4) The name and address of each incorporator;
  - (5) The number of directors constituting the first board of directors and the names and addresses of each such director;
  - (6) With respect to any organization a purpose of which is to function as a club, as defined in Section 1-3.24 of "The Liquor Control Act of 1934", as now or hereafter amended, a statement that it will comply with the State and local laws and ordinances relating to alcoholic liquors;
  - (7) Whether the corporation is a condominium association as established under the Condominium Property Act, a cooperative housing corporation defined in Section 216 of the Internal Revenue Code of 1954 or a homeowner association which administers a common-interest community as defined in subsection (c) of Section 9-102 of the Code of Civil Procedure.
- (b) The articles of incorporation may set forth:
- (1) Provisions not inconsistent with law with respect to:
    - (i) Managing and regulating the affairs of the corporation, including any provision for distribution of assets on final dissolution;
    - (ii) Providing that the corporation shall have no members, or shall have one or more classes of members;
    - (iii) Limiting, enlarging or denying the right of the members of any class or classes of members, to vote;
    - (iv) Defining, limiting, and regulating the rights, powers and duties of the corporation, its officers, directors and members; or
    - (v) Superseding any provision of this Act that requires for approval of corporation action a two-thirds vote of members or class of members entitled to vote by specifying any smaller or larger vote requirement not less than a majority of the votes which members entitled to vote on a matter shall vote, either in person or by proxy, at a meeting at which there is a quorum.
  - (2) Any provision that under this Act is required or permitted to be set forth in the articles of incorporation or bylaws.
- (c) The articles of incorporation need not set forth any of the corporate powers enumerated in this Act.
- (d) The duration of a corporation is perpetual unless otherwise specified in the articles of incorporation.
- (e) When the provisions of this Section have been complied with, the Secretary of State shall file the articles of incorporation.

*(Source: P.A. 92-33, eff. 7-1-01; 93-59, eff. 7-1-03.)*

### **Sec. 102.15. Effect of incorporation.**

Upon the filing of articles of incorporation by the Secretary of State, the corporate existence shall begin, and such filing shall be conclusive evidence, except as against the State, that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Act.

*(Source: P.A. 92-33, eff. 7-1-01.)*

### **Sec. 102.20. Organization of Corporation.**

(a) After filing the articles of incorporation, the first meeting of the board of directors shall be held at the call of a majority of the incorporators or of the directors for the purpose of:

- (1) Adopting bylaws;
- (2) Electing officers; and
- (3) Such other purposes as may come before the meeting.

In lieu of a meeting, director action may be taken by consent in writing, pursuant to Section 108.45 of this Act.

(b) If the corporation has members, a first meeting of the members may be held at the call of an officer or of a majority of the directors, for such purposes as shall be stated in the notice of the meeting.

If the corporation has members entitled to vote, then in lieu of a meeting, member action may be taken by consent in writing, pursuant to Section 107.10 of this Act.

(c) At least three days' written notice of an organizational meeting shall be given unless the persons entitled to such notice waive the same in writing, either before or after such meeting. An organizational meeting may be held either within or without this State.

*(Source: P.A. 92-33, eff. 7-1-01.)*

### **Sec. 102.25. Bylaws.**

The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation.

*(Source: P.A. 84-1423.)*

### **Sec. 102.30. Emergency bylaws.**

The board of directors of any corporation, subject to approval by not less than a majority of the members voting on the proposal, may adopt emergency bylaws, subject to repeal or change by action of the members, which, to the extent therein provided and notwithstanding any different provisions elsewhere in this Act or in the articles of incorporation or bylaws, shall be operative upon (a) the declaration of a civil defense emergency by the President of the United States or by concurrent resolution of the Congress of the United States pursuant to Title 50, Appendix, Section 2291 of the United States Code, or any amendment thereof, or (b) upon a proclamation of a civil defense emergency by the Governor of the State

of Illinois which relates to an attack or imminent attack on the United States or any of its possessions. Such emergency bylaws shall cease to be effective and shall be suspended upon any proclamation by the President of the United States, or the passage by the Congress of a concurrent resolution, or any declaration by the Governor of Illinois that such civil defense emergency no longer exists.

Emergency bylaws adopted pursuant to this Act may contain such provisions as may be deemed practical and necessary for the interim management of the affairs of the corporation, including, without limitation, provisions with respect to the number of directors or members who shall constitute a quorum at a meeting of the board of directors or the members, the number of votes necessary for action by such board or by the members, the procedure for holding a special election of directors and the procedure for calling and holding meetings of members or directors. No officer, director or employee shall be liable for any action taken by him or her in good faith in such an emergency to protect or preserve assets of the corporation endangered by the existence of such emergency even though not authorized by the bylaws then in effect.

Notwithstanding anything contained herein to the contrary, emergency bylaws adopted pursuant to this Act shall not supersede the regular bylaws of the corporation, the articles of incorporation or the provisions of this Act, in respect of amending the articles of incorporation or the regular bylaws of the corporation, adopting a plan of merger or consolidation with another corporation or corporations, authorizing the sale, lease, exchange, or other disposition of all or substantially all of the property and assets of the corporation other than in the usual and regular course of business, or authorizing the dissolution of the corporation; and the regular bylaws of the corporation, the articles of incorporation and the provisions of this Act shall continue in full force and effect for such purposes.

*(Source: P.A. 84-1423.)*

#### **Sec. 102.35. Incorporation of an association or society.**

(a) When an unincorporated association or society, organized for any of the purposes for which a corporation could be formed under this Act, authorizes the incorporation of the association or society by the same procedure and affirmative vote of its voting members or delegates as its constitution, bylaws, or other fundamental agreement requires for an amendment to its fundamental agreement or, if no such vote is specified, by a majority vote of the voting members present at a duly convened meeting the purpose of which is stated in the notice of the meeting, then following the filing of articles of incorporation under Section 102.10 setting forth those facts and that the required vote has been obtained and upon the filing of the articles of incorporation, the association or society shall become a corporation and the members of the association or society shall become members of the corporation in accordance with provisions in the articles to that effect.

(b) Upon incorporation, all the rights, privileges, immunities, powers, franchise, authority, and property of the unincorporated association or society shall pass to and vest in the corporation, and all obligations of the unincorporated association or society shall become obligations of the corporation.

*(Source: P.A. 92-33, eff. 7-1-01.)*

### **ARTICLE 3. PURPOSES AND POWERS**

#### **Sec. 103.05. Purposes and authority of corporations; particular purposes; exemptions.**

(a) Not-for-profit corporations may be organized under this Act for any one or more of the following or similar purposes:

- (1) Charitable.
- (2) Benevolent.
- (3) Eleemosynary.
- (4) Educational.
- (5) Civic.
- (6) Patriotic.
- (7) Political.
- (8) Religious.
- (9) Social.
- (10) Literary.
- (11) Athletic.
- (12) Scientific.
- (13) Research.
- (14) Agricultural.
- (15) Horticultural.
- (16) Soil improvement.
- (17) Crop improvement.
- (18) Livestock or poultry improvement.
- (19) Professional, commercial, industrial, or trade association.
- (20) Promoting the development, establishment, or expansion of industries.
- (21) Electrification on a cooperative basis.
- (22) Telephone service on a mutual or cooperative basis.
- (23) Ownership and operation of water supply facilities for drinking and general domestic use on a mutual or cooperative basis.
- (24) Ownership or administration of residential property on a cooperative basis.
- (25) Administration and operation of property owned on a condominium basis or by a homeowner association.
- (26) Administration and operation of an organization on a cooperative basis producing or furnishing goods, services, or facilities primarily for the benefit of its members who are consumers of those goods, services, or facilities.



(27) Operation of a community mental health board or center organized pursuant to the Community Mental Health Act for the purpose of providing direct patient services.

(28) Provision of debt management services as authorized by the Debt Management Service Act.

(29) Promotion, operation, and administration of a ridesharing arrangement as defined in Section 1-176.1 of the Illinois Vehicle Code.

(30) The administration and operation of an organization for the purpose of assisting low-income consumers in the acquisition of utility and telephone services.

(31) Any purpose permitted to be exempt from taxation under Sections 501(c) or 501(d) of the United States Internal Revenue Code, as now in or hereafter amended.

(32) Any purpose that would qualify for tax-deductible gifts under the Section 170(c) of the United States Internal Revenue Code, as now or hereafter amended. Any such purpose is deemed to be charitable under subsection (a)(1) of this Section.

(33) Furnishing of natural gas on a cooperative basis.

(b) A corporation may be organized hereunder to serve in an area that adjoins or borders (except for any intervening natural watercourse) an area located in an adjoining state intended to be similarly served, and the corporation may join any corporation created by the adjoining state having an identical purpose and organized as a not-for-profit corporation. Whenever any corporation organized under this Act so joins with a foreign corporation having an identical purpose, the corporation shall be permitted to do business in Illinois as one corporation; provided (1) that the name, bylaw provisions, officers, and directors of each corporation are identical, (2) that the foreign corporation complies with the provisions of this Act relating to the admission of foreign corporation, and (3) that the Illinois corporation files a statement with the Secretary of State indicating that it has joined with a foreign corporation setting forth the name thereof and the state of its incorporation.

*(Source: P.A. 94-738, eff. 5-4-06.)*

### **Sec. 103.10. General powers.**

Each corporation shall have power:

(a) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(b) To sue and be sued, complain and defend, in its corporate name, and shall have standing to sue when one or more of its members would otherwise have standing to sue in his or her own right, providing the interests it seeks to protect are germane to the corporation's purposes, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit;

(c) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced, provided that the affixing of a corporate seal to an instrument shall not give the instrument additional force or effect, or change the construction thereof, and the use of a corporate seal is not mandatory;

- (d) To purchase, take, receive, lease as lessee, take by gift, devise, or bequest, or otherwise acquire, and to own, hold, hold as trustee, use, and otherwise deal in and with any real or personal property, or any interest therein, situated in or out of this State;
- (e) To sell and convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property and assets;
- (f) To lend money to its officers, employees and agents except as limited by Section 108.80 of this Act;
- (g) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals;
- (h) To incur liabilities, to borrow money for its corporate purposes at such rates of interest as the corporation may determine without regard to the restrictions of any usury law of this State, to issue its notes, bonds and other obligations; to secure any of its obligations by mortgage, pledge, or deed of trust of all or any of its property, franchises, and income; and to make contracts, including contracts of guaranty and suretyship;
- (i) To invest its funds from time to time and to lend money for its corporate purposes, and to take and hold real and personal property as security for the payment of funds so invested or loaned;
- (j) To conduct its affairs, carry on its operations, and have offices within and without this State and to exercise in any other state, territory, district, or possession of the United States, or in any foreign country, the powers granted by this Act;
- (k) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensations;
- (l) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this State, except as provided in Section 102.30 of this Act, for the administration and regulation of the affairs of the corporation;
- (m) To make donations in furtherance of any of its purposes; to lend money to the State or Federal government; and to conduct any lawful affairs in aid of the United States;
- (n) To cease its corporate activities and surrender its corporate franchise;
- (o) To establish deferred compensation plans, pension plans, and other incentive plans for its directors, officers and employees and to make the payments provided for therein;
- (p) To indemnify its directors, officers, employees or agents in accordance with and to the extent permitted by Section 108.75 of this Act and other applicable provisions of law;
- (q) To be a promoter, partner, member, associate or manager of any partnership, joint venture or other enterprise; and
- (r) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed.

*(Source: P.A. 90-203, eff. 7-24-97.)*

**Sec. 103.12. Private foundations – Federal tax laws.**

In the absence of an express provision to the contrary in its articles of incorporation, a corporation, as defined in Section 509 of the Internal Revenue Code of 1986, as may be amended from time to time, during the period it is a private foundation:

- (a) Shall not engage in any act of self-dealing as defined in Section 4941(d) thereof;
- (b) Shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 thereof;
- (c) Shall not retain any excess business holdings as defined in Section 4943(c) thereof;
- (d) Shall not make any investment in such manner as to subject it to tax under Section 4944 thereof;
- (e) Shall not make any taxable expenditure as defined in Section 4945(d) thereof.

*(Source: P.A. 96-649, eff. 1-1-10.)*

**Sec. 103.15. Defense of Ultra Vires.**

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

- (a) In a proceeding by a member entitled to vote or by a director against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are 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 such contract, and in so doing shall allow to the corporation or the other parties, 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 such 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, to the extent provided for by Section 107.80 of this Act, through a member in a representative suit, against the officers or directors of the corporation for exceeding their authority; or
- (c) In a proceeding by the State, as provided in this Act, to dissolve the corporation, or in a proceeding by the State to enjoin the corporation from the transaction of unauthorized affairs.

*(Source: P.A. 84-1423.)*

**Sec. 103.20. Unauthorized assumption of corporate powers.**

All persons who assume to exercise corporate powers without authority to so do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

*(Source: P.A. 84-1423.)*

### **Sec. 103.25. Locale misrepresentation.**

(a) A person shall not advertise or cause to be listed in a telephone directory an assumed or fictitious business name that intentionally misrepresents where the business is actually located or operating or falsely states that the business is located or operating in the area covered by the telephone directory. This subsection (a) does not apply to a telephone service provider or to the publisher or distributor of a telephone service directory, unless the conduct prescribed in this subsection (a) is on behalf of that telephone service provider or that publisher or distributor.

(b) A foreign not-for-profit corporation that violates this Section is guilty of a petty offense and must be fined not less than \$501 and not more than \$1,000. A foreign not-for-profit corporation is guilty of an additional offense for each additional day in violation of this Section.

*(Source: P.A. 91-906, eff. 1-1-01.)*

### **Sec. 103.30. Homeowners' association; American flag or military flag.**

(a) Notwithstanding any provision in the association's declaration, covenants, bylaws, rules, regulations, or other instruments or any construction of any of those instruments by an association's board of directors, a homeowners' association incorporated under this Act may not prohibit the outdoor display of the American flag or a military flag, or both, by a homeowner on that homeowner's property if the American flag is displayed in a manner consistent with Sections 4 through 10 of Chapter 1 of Title 4 of the United States Code and a military flag is displayed in accordance with any reasonable rules and regulations adopted by the association. An association may adopt reasonable rules and regulations, consistent with Sections 4 through 10 of Chapter 1 of Title 4 of the United States Code, regarding the placement and manner of display of the American flag and an association may adopt reasonable rules and regulations regarding the placement and manner of display of a military flag. An association may not prohibit the installation of a flagpole for the display of the American flag or a military flag, or both, but the association may adopt reasonable rules and regulations regarding the location and size of flagpoles.

(b) As used in this Section:

"American flag" means the flag of the United States (as defined in Section 1 of Chapter 1 of Title 4 of the United States Code and the Executive Orders entered in connection with that Section) made of fabric, cloth, or paper displayed from a staff or flagpole or in a window, but "American flag" does not include a depiction or emblem of the American flag made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component.

"Homeowners' association" includes a property owners' association, townhome association, and any similar entity, and "homeowner" includes a townhome owner.

"Military flag" means a flag of any branch of the United States armed forces or the Illinois National Guard made of fabric, cloth, or paper displayed from a staff or flagpole or in a window, but "military flag" does not include a depiction or emblem of a military flag made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component.

*(Source: P.A. 93-481, eff. 1-1-04.)*

**Sec. 103.35. Unemployment insurance; notice.**

A not-for-profit corporation that is excluded from the definition of "nonprofit organization" under Section 211.2 of the Unemployment Insurance Act because it does not have in employment 4 or more individuals within each of 20 or more calendar weeks must provide a written notice to each employee, either in each employee's employment contract or in a written notice provided to employees who do not have employment contracts, and to each member of the board of directors that the employees of the not-for-profit corporation are not eligible to receive unemployment insurance benefits on the basis of their employment for the not-for-profit corporation.

*(Source: P.A. 96-970, eff. 1-1-11.)*

**ARTICLE 4. NAME**

**Sec. 104.05. Corporate name of domestic or foreign corporation.**

(a) The corporate name of a domestic corporation or of a foreign corporation organized, existing or subject to the provisions of this Act:

(1) May contain, separate and apart from any other word or abbreviation in such name, the word "corporation," "company," "incorporated," or "limited," or an abbreviation of one of such words;

(2) Must end with the letters "NFP" if the corporate name contains any word or phrase which indicates or implies that the corporation is organized for any purpose other than a purpose for which corporations may be organized under this Act or a purpose other than a purpose set forth in the corporation's articles of incorporation;

(3) Shall be distinguishable upon the records in the office of the Secretary of State from the name or assumed name of any domestic corporation or limited liability company organized under the Limited Liability Company Act, whether for profit or not for profit, existing under any Act of this State or the name or assumed name of any foreign corporation or foreign limited liability company registered under the Limited Liability Company Act, whether for profit or not for profit, authorized to transact business or conduct affairs in this State, or a name the exclusive right to which is, at the time, reserved or registered in the manner provided in this Act or Section 1-15 of the Limited Liability Company Act, except that, subject to the discretion of the Secretary of State, a foreign corporation that has a name prohibited by this paragraph may be granted authority to conduct its affairs in this State, if the foreign corporation:

(i) Elects to adopt an assumed corporation name or names in accordance with Section 104.15 of this Act; and

(ii) Agrees in its application for authority to conduct affairs in this State only under such assumed corporate name or names;

(4) Shall not contain a word or phrase, or an abbreviation or derivation thereof, the use of which is prohibited or restricted by any other statute of this State unless such restriction has been complied with;

(5) Shall consist of letters of the English alphabet, Arabic or Roman numerals, or symbols capable of being readily reproduced by the office of the Secretary of State;

(6) Shall not contain the words "regular democrat," "regular democratic," "regular republican," "democrat," "democratic," or "republican," nor the name of any other established political party, unless consent to usage of such words or name is given to the corporation by the State central committee of such established political party; notwithstanding any other provisions of this Act, any corporation, whose name at the time this amendatory Act takes effect contains any of the words listed in this paragraph shall certify to the Secretary of State no later than January 1, 1989, that consent has been given by the State central committee; consent given to a corporation by the State central committee to use the above listed words may be revoked upon notification to the corporation and the Secretary of State;

(7) Shall be the name under which the corporation shall conduct affairs in this State unless the corporation shall also elect to adopt an assumed corporate name or names as provided in this Act; provided, however, that the corporation may use any divisional designation or trade name without complying with the requirements of this Act, provided the corporation also clearly discloses its corporate name; and

(8) Shall not, as to any corporation organized or amending its corporate name on or after April 3, 2009 (the effective date of Public Act 96-7), without the express written consent of the United States Olympic Committee, contain the words: (i) "Olympic"; (ii) "Olympiad"; (iii) "Paralympic"; (iv) "Paralympiad"; (v) "Citius Altius Fortius"; (vi) "CHICOG"; or (vii) "Chicago 2016".

(b) The Secretary of State shall determine whether a name is "distinguishable" from another name for purposes of this Act. Without excluding other names which may not constitute distinguishable names in this State, a name is not considered distinguishable, for purposes of this Act, solely because it contains one or more of the following:

(1) The word "corporation," "company," "incorporated," or "limited" or an abbreviation of one of such words;

(2) Articles, conjunctions, contractions, abbreviations, different tenses or number of the same word.

(c) Nothing in this Section or Sections 104.15 or 104.20 of this Act shall:

(1) Require any domestic corporation existing or any foreign corporation having authority to conduct affairs on the effective date of this Act, to modify or otherwise change its corporate name or assumed corporate name, if any; or

(2) Abrogate or limit the common law or statutory law of unfair competition or unfair trade practices, nor derogate from the common law or principles of equity or the statutes of this State or of the United States with respect to the right to acquire and protect copyrights, trade names, trade marks, service names, service marks, or any other right to the exclusive use of name or symbols.

*(Source: P.A. 96-7, eff. 4-3-09; 96-66, eff. 1-1-10; 96-328, eff. 8-11-09; 96-1000, eff. 7-2-10.)*

#### **Sec. 104.10. Reserved name.**

The exclusive right to the use of a corporate name or an assumed corporate name, as the case may be, may be reserved by:

(a) Any person intending to organize a corporation under this Act;

(b) Any domestic corporation intending to change its name;

- (c) Any foreign corporation intending to make application for a certificate of authority to conduct affairs in this State;
- (d) Any foreign corporation authorized to conduct affairs in this State and intending to change its name;
- (e) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to conduct affairs in this State;
- (f) Any domestic corporation intending to adopt an assumed corporate name; or
- (g) Any foreign corporation authorized to conduct affairs in this State and intending to adopt an assumed corporate name.

Such reservation shall be made by filing in the office of the Secretary of State an application to reserve a specified corporate name or a specified assumed corporate name, executed by the applicant. If the Secretary of State finds that such name is available for corporate use, he or she shall reserve the same for the exclusive use of such applicant for a period of ninety days.

The right to the exclusive use of a specified corporate name or assumed corporate name so reserved may be transferred to any other person by filing in the office of the Secretary of State a notice of such transfer, executed by the person for whom such name was reserved, and specifying the name and address of the transferee.

The Secretary of State may revoke any reservation if, after a hearing, he or she finds that the application therefor or any transfer thereof was made contrary to this Act.

*(Source: P.A. 84-1423.)*

#### **Sec. 104.15. Assumed corporate name.**

(a) A domestic corporation or a foreign corporation admitted to conduct affairs or attempting to gain admission to conduct affairs may elect to adopt an assumed corporate name that complies with the requirements of subsection (a) of Section 104.05 of this Act with respect to corporate names.

(b) As used in this Act, "assumed corporate name" means any corporate name other than the true corporate name, except that the following shall not constitute the use of an assumed corporate name under this Act:

- (1) The identification by a corporation of the conduct of its affairs with a trademark or service mark of which it is the owner or licensed user; or
- (2) The use of the name of a division, not separately incorporated and not containing the word "corporation," "incorporated," or "limited" or an abbreviation of one of such words, provided the corporation also clearly discloses its corporate name.

(c) Before conducting any affairs in this State under an assumed corporate name or names, the corporation shall, for each assumed corporate name, pursuant to resolution by its board of directors, execute and file in accordance with Section 101.10 of this Act, an application setting forth:

- (1) The true corporate name;
- (2) The State or country under the laws of which it is organized;

(3) That it intends to conduct affairs under an assumed corporate name;

(4) The assumed corporate name which it proposes to use.

(d) The right to use an assumed corporate name shall be effective from the date of filing by the Secretary of State until the first day of the anniversary month of the corporation that falls within the next calendar year evenly divisible by 5, except that if an application is filed within the 2 months immediately preceding the anniversary month of a corporation that falls within a calendar year evenly divisible by 5, the right to use the assumed corporate name shall be effective until the first day of the anniversary month of the corporation that falls within the next succeeding calendar year evenly divisible by 5.

(e) A corporation shall renew the right to use its assumed corporate name or names, if any, within the 60 days preceding the expiration of such right, for a period of 5 years, by making an election to do so at the time of filing its annual report form and by paying the renewal fee as prescribed by this Act.

(f) (Blank).

(g) A foreign corporation may not use an assumed or fictitious name in the conduct of its business to intentionally misrepresent the geographic origin or location of the corporation within Illinois.

*(Source: P.A. 96-1121, eff. 1-1-11.)*

#### **Sec. 104.20. Change and cancellation of assumed corporate name.**

(a) Any domestic or foreign corporation may, pursuant to resolution by its board of directors, change or cancel any or all of its assumed corporate names by executing and filing, in accordance with Section 101.10 of this Act, an application setting forth:

(1) The true corporate name;

(2) The state or country under the laws of which it is organized;

(3) That it intends to cease conducting affairs under an assumed corporate name by changing or canceling it;

(4) The assumed corporate name to be changed from or cancelled;

(5) If the assumed corporate name is to be changed, the assumed corporate name which the corporation proposes to use.

(b) Upon the filing of an application to change an assumed corporate name, the corporation shall have the right to use such assumed corporate name for the period authorized by subsection (d) of Section 104.15 of this Act.

(c) The right to use an assumed corporate name shall be cancelled by the Secretary of State:

(1) If the corporation fails to renew an assumed corporate name;

(2) If the corporation has filed an application to change or cancel an assumed corporate name;

(3) If a domestic corporation has been dissolved;



(4) If a foreign corporation has had its authority to conduct affairs in this State revoked.

*(Source: P.A. 96-66, eff. 1-1-10.)*

**Sec. 104.25. Registered name of foreign corporation.**

Any foreign corporation not conducting affairs in this State and not authorized to conduct affairs in this State may register its corporate name, provided its corporate name is available for use as determined by the Secretary of State in accordance with the provisions of this Act.

(a) Such registration shall be made:

(1) By executing and filing in accordance with Section 101.10 of this Act:

(i) An application for registration, stating the name of the corporation, the state or place under the laws of which it is incorporated, the date of its incorporation, a brief statement of the affairs which it is conducting or plans to conduct, the post office address of the corporation to which the Secretary of State may mail notices as required or permitted by this Act and that it desires to register its name under this Section; and

(ii) A certificate setting forth that such corporation is in good standing under the laws of the state or place wherein it is organized executed by the Secretary of State of such state or by such other public official as may have custody of the records pertaining to corporations; and

(2) By paying to the Secretary of State the fee prescribed by this Act.

(b) Such registration shall be effective from the date of filing by the Secretary of State until the first day of the 12th month following such date.

(c) Such registration may be renewed from year to year by filing an application for renewal setting forth the facts required in an original application for registration and a certificate of good standing as required for the original registration and by paying the fee prescribed by this Act within 60 days immediately preceding the first day of the 12th month following the date of filing the original registration or prior renewal. Such renewal shall extend the registration for 12 months, to expire on the first day of the month in which the original registration was filed the next year.

(d) Any foreign corporation which has in effect a registration of its corporate name may cancel such registration at any time by filing an application for cancellation in the same manner and setting forth the same facts required to be set forth in an original registration and paying the fee prescribed by this Act.

(e) The Secretary of State may cancel any registration if, after a hearing, he or she finds that the application therefor or any renewal thereof was made contrary to this Act.

*(Source: P.A. 84-1423.)*

**ARTICLE 5. OFFICE AND AGENT**

**Sec. 105.05. Registered office and registered agent.**

(a) Each domestic corporation and each foreign corporation having authority to conduct affairs in this State shall have and continuously maintain in this State:

(1) A registered office which may be, but need not be, the same as its place of business in this State.

(2) A registered agent, which agent may be either an individual, resident in this State, whose business office is identical with such registered office, or a for profit domestic or foreign corporation, limited liability company, limited partnership, or limited liability partnership authorized to transact business in this State that is authorized by its statement of purpose to act as such agent, having a business office identical with such registered office.

(b) The address, including street and number, if any, of the initial registered office, and the name of the initial registered agent of each corporation organized under this Act shall be stated in its articles of incorporation; and of each foreign corporation shall be stated in its application for authority to conduct affairs in this State.

(c) In the event of dissolution of a corporation, either voluntary, administrative, or judicial, the registered agent and the registered office of the corporation on record with the Secretary of State on the date of the issuance of the certificate or judgment of dissolution shall be an agent of the corporation upon whom claims can be served or service of process can be had during the two year post-dissolution period provided in Section 112.80 of this Act, unless such agent resigns or the corporation properly reports a change of registered office or registered agent.

(d) In the event of revocation of authority of a foreign corporation, the registered agent and the registered office of the corporation on record with the Secretary of State on the date of the issuance of the certificate of revocation shall be an agent of the corporation upon whom claims can be served or service of process can be had, unless such agent resigns.

*(Source: P.A. 96-988, eff. 7-2-10.)*

#### **Sec. 105.10. Change of registered office or registered agent.**

(a) A domestic corporation or a foreign corporation may from time to time change the address of its registered office. A domestic corporation or a foreign corporation shall change its registered agent if the office of registered agent shall become vacant for any reason, or if its registered agent becomes disqualified or incapacitated to act, or if the corporation revokes the appointment of its registered agent.

(b) A domestic corporation or a foreign corporation may change the address of its registered office or change its registered agent, or both, by executing and filing in duplicate, in accordance with Section 101.10 of this Act, a statement setting forth:

- (1) the name of the corporation;
- (2) the address, including street and number, or rural route number, of its then registered office;
- (3) if the address of its registered office be changed, the address, including street and number, or rural route number, to which the registered office is to be changed;
- (4) the name of its then registered agent;
- (5) if its registered agent be changed, the name of its successor registered agent;

(6) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical;

(7) that such change was authorized by resolution duly adopted by the board of directors.

(c) (Blank).

(d) (Blank).

(e) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the Secretary of State.

*(Source: P.A. 96-1121, eff. 1-1-11.)*

#### **Sec. 105.15. Resignation of registered agent.**

(a) A registered agent may at any time resign by filing in the office of the Secretary of State written notice thereof, and by mailing a copy thereof to the corporation at its principal office as such is known to said resigning agent, such notice to be mailed at least 10 days prior to the date of filing thereof with the Secretary of State.

(b) The notice shall set forth:

(1) The name of the corporation for which the registered agent is acting;

(2) The name of the registered agent;

(3) The address, including street and number, or rural route number, of the corporation's then registered office in this State;

(4) That the registered agent resigns;

(5) The effective date thereof which shall not be less than 30 days after the date of filing;

(6) The address of the principal office of the corporation as such is known to the registered agent;

(7) A statement that a copy of this notice has been sent to the principal office within the time and in the manner prescribed by this Section.

(c) Such notice shall be executed by the registered agent, if an individual, or, if a business entity, in the manner authorized by the governing statute.

*(Source: P.A. 96-988, eff. 7-2-10.)*

#### **Sec. 105.20. Change of Address of Registered Agent.**

(a) A registered agent may change the address of the registered office of the domestic corporation or of the foreign corporation, for which he or she or it is registered agent, to another address in this State, by filing, in duplicate, in accordance with Section 101.10 of this Act a statement setting forth:

(1) the name of the corporation;

(2) the address, including street and number, or rural route number, of its then registered office;

(3) the address, including street and number, or rural route number, to which the registered office is to be changed;

(4) the name of its registered agent;

(5) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

(b) Such statement shall be executed by the registered agent.

(c) The change of address of the registered office shall become effective upon the filing of such statement by the Secretary of State.

*(Source: P.A. 92-33, eff. 7-1-01; 93-59, eff. 7-1-03.)*

### **Sec. 105.25. Service of process on domestic or foreign corporation.**

(a) Any process, notice, or demand required or permitted by law to be served upon a domestic corporation or a foreign corporation having authority to conduct affairs in this State may be served either upon the registered agent appointed by the corporation or upon the Secretary of State as provided in this Section.

(b) The Secretary of State shall be irrevocably appointed as an agent of a domestic corporation or of a foreign corporation having authority upon whom any process, notice or demand may be served:

(1) Whenever the corporation shall fail to appoint or maintain a registered agent in this State; or

(2) Whenever the corporation's registered agent cannot with reasonable diligence be found at the registered office in this State; or

(3) When a domestic corporation has been dissolved, the conditions of paragraph (1) or paragraph (2) exist, and an action, suit or proceeding is instituted against or affecting the corporation within the two years after the dissolution or the filing of a judgment of dissolution; or

(4) When the authority of a foreign corporation has been revoked.

(c) Service under subsection (b) shall be made by:

(1) Service on the Secretary of State, or on any clerk having charge of the corporation division at his or her office, of a copy of the process, notice or demand, together with any papers required by law to be delivered in connection with service, and a fee as prescribed by subsection (b) of Section 115.15 of this Act;

(2) Transmittal by the person instituting the action, suit or proceeding of notice of the service on the Secretary of State and a copy of the process, notice or demand and accompanying papers to the corporation being served, by registered or certified mail:

(i) At the last registered office of the corporation as shown by the records on file in the office of the Secretary of State; or

(ii) At such address the use of which the person instituting the action, suit or proceeding knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice; and

(3) Appendage by the person instituting the action, suit or proceeding of an affidavit of compliance with this Section in substantially such form as the Secretary of State may by rule or regulation prescribe, to the process, notice or demand.

(d) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

(e) The Secretary of State shall keep a record of all processes, notices, and demands served upon him or her under this Section, and shall record therein the time of such service and his or her action with reference thereto but shall not be required to retain such information for a period longer than five years from his or her receipt of the service.

*(Source: P.A. 92-33, eff. 7-1-01.)*

**Sec. 105.30. Service of process on foreign corporation not authorized to conduct affairs in Illinois.**

If any foreign corporation conducts affairs in this State without having authority to conduct affairs, it shall be deemed that such corporation has designated and appointed the Secretary of State as an agent for process upon whom any notice, process or demand may be served. Service on the Secretary of State shall be made in the manner set forth in subsection (c) of Section 105.25 of this Act.

*(Source: P.A. 92-33, eff. 7-1-01.)*

**ARTICLE 6. SHARES; DIVIDENDS; CONTRIBUTIONS**

**Sec. 106.05. Shares and dividends prohibited.**

A corporation shall not have or issue shares. No dividend shall be paid and no part of the money, property or other assets of a corporation shall be distributed to its members, directors or officers; provided, however, that a corporation may pay compensation in a reasonable amount to members, officers or directors for services rendered, including for service as a director only, and may make distributions pursuant to Section 109.10 of this Act or upon dissolution or final liquidation as permitted by Article 12 of this Act.

*(Source: P.A. 84-1423.)*

**Sec. 106.10. Evidence of contribution.**

A contribution of a member may be evidenced by a written instrument delivered to the member, but such instrument shall not be denominated a "share of stock" or by any word or term implying that the instrument is a share as such term is used in the Business Corporation Act of 1983 as now in effect or as hereafter amended.

*(Source: P.A. 84-1423.)*

## **ARTICLE 7. MEMBERS**

### **Sec. 107.03. Members.**

- (a) A corporation may have one or more classes of members or may have no members.
- (b) If the corporation has one or more classes of members, the designation of the class or classes and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. The articles of incorporation or the bylaws may provide for representatives or delegates of members and may establish their qualifications and rights.
- (c) If the corporation is to have no members, that fact shall be set forth in the articles of incorporation or the bylaws.
- (d) A corporation may issue certificate evidencing membership therein.
- (e) The transfer of a certificate of membership in a not-for-profit corporation in which assets are held for a charitable, religious, eleemosynary, benevolent or educational purpose, shall be without payment of any consideration of money or property of any kind or value to the transferor in respect to such transfer. Any transfer in violation of this Section shall be void.
- (f) Where the articles of incorporation or bylaws provide that a corporation shall have no members, or where a corporation has under its articles of incorporation, bylaws or in fact no members entitled to vote on a matter, any provision of this Act requiring notice to, the presence of, or the vote, consent or other action by members of the corporation in connection with such matter shall be satisfied by notice to, the presence of, or the vote, consent or other action of the directors of the corporation.
- (g) A residential cooperative not-for-profit corporation containing 50 or more single family units with individual unit legal descriptions based upon a recorded plat of a subdivision and located in a county with a population between 780,000 and 3,000,000 shall specifically set forth the qualifications and rights of its members in the Articles of Incorporation and the bylaws.

*(Source: P.A. 91-465, eff. 8-6-99.)*

### **Sec. 107.05. Meeting of members.**

- (a) Meetings of members may be held either within or without this State, as may be provided in the bylaws or in a resolution of the board of directors pursuant to authority granted in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in this State.
- (b) An annual meeting of the members entitled to vote may be held at such time as may be provided in the bylaws or in a resolution of the board of directors pursuant to authority granted in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation nor affect the validity of corporate action. If an annual meeting has not been held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting and if, after a request in writing directed to the president of the corporation, a notice of meeting is not delivered to members entitled to vote within 60 days of such request, then any member entitled to vote at an annual meeting may apply to the circuit court of the county in which the registered office or principal place of business of the corporation is located for an order directing that

the meeting be held and fixing the time and place of the meeting. The court may issue such additional orders as may be necessary or appropriate for the holding of the meeting.

(c) Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members entitled to vote as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to vote who are entitled to call a meeting, a special meeting of members entitled to vote may be called by such members having one-twentieth of the votes entitled to be cast at such meeting.

(d) Unless specifically prohibited by the articles of incorporation or bylaws, a corporation may allow members entitled to vote to participate in and act at any meeting through the use of a conference telephone or interactive technology, including but not limited to electronic transmission, Internet usage, or remote communication, by means of which all persons participating in the meeting can communicate with each other. Participation in such meeting shall constitute attendance and presence in person at the meeting of the person or persons so participating.

(e) For meetings of a not-for-profit corporation organized for the purpose of residential cooperative housing, consisting of 50 or more single family dwellings with individual unit legal descriptions based upon a recorded plat of a subdivision, and located in a county containing a population between 780,000 and 3,000,000 inhabitants, any member may record by tape, film, or other means the proceedings at the meetings. The board or the membership may prescribe reasonable rules and regulations to govern the making of the recordings. The portion of any meeting held to discuss violations of rules and regulations of the corporation by a residential shareholder shall be recorded only with the affirmative assent of that shareholder.

*(Source: P.A. 91-465, eff. 8-6-99; 92-771, eff. 8-6-02.)*

#### **Sec. 107.10. Informal action by members entitled to vote.**

(a) Unless otherwise provided in the articles of incorporation or the bylaws, any action required by this Act to be taken at any annual or special meeting of the members entitled to vote, or any other action which may be taken at a meeting of the members entitled to vote, may be taken by ballot without a meeting in writing by mail, e-mail, or any other electronic means pursuant to which the members entitled to vote thereon are given the opportunity to vote for or against the proposed action, and the action receives approval by a majority of the members casting votes, or such larger number as may be required by the Act, the articles of incorporation, or the bylaws, provided that the number of members casting votes would constitute a quorum if such action had been taken at a meeting. Voting must remain open for not less than 5 days from the date the ballot is delivered; provided, however, in the case of a removal of one or more directors, a merger, consolidation, dissolution or sale, lease or exchange of assets, the voting must remain open for not less than 20 days from the date the ballot is delivered.

(b) Such informal action by members shall become effective only if, at least 5 days prior to the effective date of such informal action, a notice in writing of the proposed action is delivered to all of the members entitled to vote with respect to the subject matter thereof.

(c) In the event that the action which is approved is such as would have required the filing of a certificate under any other Section of this Act if such action had been voted on by the members at a meeting thereof, the certificate filed under such other Section shall state, in lieu of any statement

required by such Section concerning any vote of members, that an informal vote has been conducted in accordance with the provisions of this Section and that written notice has been delivered as provided in this Section.

(d) In addition, unless otherwise provided in the articles of incorporation or the bylaws, any action required by this Act to be taken at any annual or special meeting of the members entitled to vote, or any other action which may be taken at a meeting of members entitled to vote, may also be taken without a meeting and without a vote if a consent in writing, setting forth the action so taken, shall be approved by all the members entitled to vote with respect to the subject matter thereof.

*(Source: P.A. 96-649, eff. 1-1-10; 96-994, eff. 7-2-10.)*

#### **Sec. 107.15. Notice of members' meetings.**

Written notice stating the place, day, and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 5 nor more than 60 days before the date of the meeting, or in the case of a removal of one or more directors, a merger, consolidation, dissolution or sale, lease or exchange of assets not less than 20 nor more than 60 days before the date of the meeting, by or at the direction of the president, or the secretary, or the officer or persons calling the meeting, to each member of record entitled to vote at such meeting. A residential cooperative not-for-profit corporation containing 50 or more single family units with individual unit legal descriptions based upon a recorded plat of a subdivision and located in a county with a population between 780,000 and 3,000,000 shall, in addition to the other requirements of this Section, post notice of member's meetings in conspicuous places in the residential cooperative at least 48 hours prior to the meeting of the members.

*(Source: P.A. 91-465, eff. 8-6-99.)*

#### **Sec. 107.20. Waiver of notice.**

Whenever any notice whatever is required to be given under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of any corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance at any meeting shall constitute waiver of notice thereof unless the person at the meeting objects to the holding of the meeting because proper notice was not given.

*(Source: P.A. 84-1423.)*

#### **Sec. 107.25. Fixing record date for voting.**

For the purpose of determining members entitled to notice of or to vote at any meeting of members, or in order to make a determination of members for any other proper purpose, the board of directors of a corporation may fix in advance a date as the record date for any such determination of members, such date in any case to be not more than 60 days and, for a meeting of members, not less than 5 days, or in the case of a merger, consolidation, dissolution or sale, lease or exchange of assets, not less than 20 days, immediately preceding such meeting. If no record date is fixed for the determination of members entitled to notice of or to vote at a meeting of members, the date on which notice of the meeting is delivered shall be the record date for such determination of members. When a determination of members entitled to vote at any meeting of members has been made as provided in this Section, such determination shall apply to



any adjournment thereof. In lieu of the board of directors from time to time establishing record dates, the bylaws of the corporation may establish a mechanism for determining record dates in all or specified instances.

*(Source: P.A. 84-1423.)*

#### **Sec. 107.35. Inspectors.**

At any meeting of members, the chairman of the meeting may, or upon the request of any members shall, appoint one or more persons as inspectors for such meeting, unless an inspector or inspectors shall have been previously appointed for such meeting in the manner provided by the bylaws of the corporation.

Such inspectors shall ascertain and report the number of votes represented at the meeting, based upon their determination of the validity and effect of proxies; count all votes and report the results; and do such other acts as are proper to conduct the election and voting with impartiality and fairness to all the members.

Each report of an inspector shall be in writing and signed by him or her or by a majority of them if there be more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors. The report of the inspector or inspectors on the number of votes represented at the meeting and the results of the voting shall be prima facie evidence thereof.

*(Source: P.A. 84-1423.)*

#### **Sec. 107.40. Voting.**

(a) 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 articles of incorporation or the 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.

(b) The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his or her vote and to give one candidate a number of votes equal to his or her vote multiplied by the number of directors to be elected, or to distribute such votes on the same principle among as many candidates as he or she shall think fit.

(c) If a corporation has no members or its members have no right to vote with respect to a particular matter, the directors shall have the sole voting power with respect to such matter.

*(Source: P.A. 96-649, eff. 1-1-10.)*

#### **Sec. 107.50. Proxies.**

A member entitled to vote may vote in person or, unless the articles of incorporation or bylaws explicitly prohibit, by proxy executed in writing by the member or by that member's duly authorized attorney-in-fact. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. Unless otherwise prohibited by the articles of incorporation or bylaws, the election of directors, officers, or representatives by members may be conducted by mail, e-mail, or any other electronic means as set forth in subsection (a) of Section 107.10.

*(Source: P.A. 96-648, eff. 10-1-09; 96-649, eff. 1-1-10; 96-1000, eff. 7-2-10.)*

**Sec. 107.60. Quorum of members entitled to vote.**

Unless otherwise provided by the articles of incorporation or the bylaws, members holding one-tenth of the votes entitled to be cast on a matter, represented in person or by proxy, shall constitute a quorum for consideration of such matter at a meeting of members. If a quorum is present, the affirmative vote of a majority of the votes present and voted, either in person or by proxy, shall be the act of the members, unless the vote of a greater number or voting by classes is required by this Act, the articles of incorporation or the bylaws. The articles of incorporation or bylaws may require any number or percent greater or smaller than one-tenth up to and including a requirement of unanimity to constitute a quorum.

*(Source: P.A. 84-1423.)*

**Sec. 107.70. Voting agreements.**

(a) Members entitled to vote may provide for the casting of their votes by signing an agreement for that purpose.

(b) A voting agreement created under this Section is specifically enforceable in accordance with the principles of equity.

*(Source: P.A. 84-1423.)*

**Sec. 107.75. Books and records.**

(a) Each corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office a record giving the names and addresses of its members entitled to vote. Any voting member shall have the right to examine, in person or by agent, at any reasonable time or times, the corporation's books and records of account and minutes, and to make extracts therefrom, but only for a proper purpose. In order to exercise this right, a voting member must make written demand upon the corporation, stating with particularity the records sought to be examined and the purpose therefor. If the corporation refuses examination, the voting member may file suit in the circuit court of the county in which either the registered agent or principal office of the corporation is located to compel by mandamus or otherwise such examination as may be proper. If a voting member seeks to examine books or records of account the burden of proof is upon the voting member to establish a proper purpose. If the purpose is to examine minutes, the burden of proof is upon the corporation to establish that the voting member does not have a proper purpose.

(b) A residential cooperative not-for-profit corporation containing 50 or more single family units with individual unit legal descriptions based upon a recorded plat of a subdivision and located in a county with a population between 780,000 and 3,000,000 shall keep an accurate and complete account of all transfers of membership and shall, on a quarterly basis, record all transfers of membership with the county clerk of the county in which the residential cooperative is located. Additionally, a list of all transfers of membership shall be available for inspection by any member of the corporation.

*(Source: P.A. 96-649, eff. 1-1-10.)*

**Sec. 107.80. Derivative suits by voting members.**

Nothing in this Act shall be construed to affect any pre-existing common law right of a voting member to bring an action in this State in the right of such corporation, nor shall this Act be construed to create any such right that did not exist prior to the effective date of this Act.

*(Source: P.A. 84-1423.)*

**Sec. 107.85. Nonliability of members.**

The members of a corporation shall not be personally liable for any debt or obligation of the corporation.

*(Source: P.A. 87-854.)*

**Sec. 107.90. Not-for-profit residential cooperative.**

(a) As used in this Section:

"Member" includes the plural "members", where a membership is jointly held.

"Membership agreement" means the contract and other documents that define the rights of the member to occupy, use, or possess a portion or all of a parcel of real estate exclusively.

"Class of membership" means a grouping of members based on the same privileges, rights, and manner of treatment by the corporation.

(b) The provisions of this Section apply only to a not-for-profit corporation organized for the purpose of residential cooperative housing consisting of 50 or more single family dwellings with individual unit legal descriptions based upon a recorded plat of a subdivision, located in a county containing a population between 780,000 and 3,000,000 inhabitants, and for which the title to one or more member's parcels is held by the corporation.

(c) If (i) title for real property occupied or controlled by a member under a membership agreement is held by or is transferred to that member; (ii) more than one class of membership exists; or (iii) the corporation fails to obtain recognition or loses recognition as a Cooperative Housing Corporation under Section 216 of the Internal Revenue Code of 1954, as amended, then:

(1) The board of directors shall issue notice to the members within 10 days after obtaining knowledge of (i), (ii), or (iii), or within 10 days after the effective date of this amendatory Act of the 91st General Assembly, if the board obtained such knowledge before the effective date of this amendatory Act of the 91st General Assembly.

(2) At the member's option, any member may receive a warranty deed for full title to the real property that he or she occupies issued by the not-for-profit corporation, upon presentation of a notarized and written request to the corporation, provided that the corporation holds the title.

(3) The member may withdraw from the corporation, at the member's option. The member shall retain his or her interest in any common property held by the corporation or may transfer his or her interest to the corporation for fair value, at the member's option.

*(Source: P.A. 91-465, eff. 8-6-99.)*

## **ARTICLE 8. DIRECTORS AND OFFICERS**

### **Sec. 108.05. Board of directors.**

(a) Each corporation shall have a board of directors, and except as provided in articles of incorporation, the affairs of the corporation shall be managed by or under the direction of the board of directors.

(b) A director need not be a resident of this State or a member of the corporation unless the articles of incorporation or bylaws so prescribe. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

(c) Unless otherwise provided in the articles of incorporation or bylaws, the board of directors, by the affirmative vote of a majority of the directors then in office, shall have authority to establish reasonable compensation of all directors for services to the corporation as directors, officers or otherwise, notwithstanding the provisions of Section 108.60 of this Act.

(d) No director may act by proxy on any matter.

*(Source: P.A. 95-368, eff. 8-23-07; 96-649, eff. 1-1-10.)*

### **Sec. 108.10. Number, election and resignation of directors.**

(a) The board of directors of a corporation shall consist of three or more directors. The number of directors shall be fixed by the bylaws, except the number of initial directors shall be fixed by the incorporators in the articles of incorporation. In the absence of a bylaw fixing the number of directors, the number shall be the same as that fixed in the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws.

(b) The bylaws may establish a variable range for the size of the board by prescribing a minimum and maximum (which may not be less than 3 or exceed the minimum by more than 5) number of directors. If a variable range is established, unless the bylaws otherwise provide, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the directors without further amendment to the bylaws.

(c) The terms of all directors expire at the next meeting for the election of directors following their election unless their terms are staggered under subsection (e). The term of a director elected to fill a vacancy expires at the next annual meeting of the members entitled to vote at which his or her predecessor's term would have expired or in accordance with Section 108.30 of this Act. The term of a director elected as a result of an increase in the number of directors expires at the next annual meeting of members entitled to vote unless the term is staggered under subsection (e).

(d) Despite the expiration of a director's term, he or she continues to serve until the next meeting of members or directors entitled to vote on directors at which directors are elected. An amendment to the bylaws decreasing the number of directors or eliminating the position of a director elected or appointed by persons or entities other than the members may shorten the terms of incumbent directors; provided, however, such amendment has been approved by the party with the authority to elect or appoint such directors.

(e) The articles of incorporation or the bylaws may provide that directors may be divided into classes and the terms of office of several classes need not be uniform. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

(f) If the articles of incorporation or bylaws authorize dividing the members into classes, the articles or bylaws may also authorize the election of all or a specified number or percentage of directors by one or more authorized classes of members.

(g) A director may resign at any time by written notice delivered to the board of directors, its chairman, or to the president or secretary of the corporation. A resignation is effective when the notice is delivered unless the notice specifies a future date. The pending vacancy may be filled before the effective date, but the successor shall not take office until the effective date.

*(Source: P.A. 96-649, eff. 1-1-10.)*

### **Sec. 108.15. Quorum of directors.**

(a) Unless otherwise provided in the articles of incorporation or the bylaws, a majority of the directors then in office shall constitute a quorum; provided, that in no event shall a quorum consist of less than one-third of the directors then in office.

(b) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

(c) Unless specifically prohibited by the articles of incorporation or bylaws, directors or nondirector committee members may participate in and act at any meeting of such board or committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can communicate with each other. Participation in such meeting shall constitute attendance and presence in person at the meeting of the person or persons so participating.

*(Source: P.A. 84-1423.)*

### **Sec. 108.20. Place of directors' meetings.**

Regular or special meetings of the board of directors may be held either within or without this State.

*(Source: P.A. 84-1423.)*

### **Sec. 108.21.**

Meetings of the board of directors of a not-for-profit homeowners association or residential cooperative not-for-profit corporation shall be open to any member, except for the portion of any meeting held (i) to discuss litigation when an action against or on behalf of the corporation has been filed and is pending in a court or administrative tribunal, or when the board of directors finds that such an action is probable or imminent, (ii) to consider information regarding appointment, employment or dismissal of an employee, or (iii) to discuss violations of rules and regulations of the corporation. Any member may record by tape, film or other means the proceedings at such meetings or portions thereof required to be open by this Section. The board may prescribe reasonable rules and regulations to govern the right to make such recordings. Notice of such meetings shall be mailed or delivered at least 48 hours prior thereto, unless a written waiver of such notice is signed by the person or persons entitled to such notice pursuant to the articles of incorporation, bylaws, other instrument before the meeting is convened. Copies of notices of

meetings of the board of directors shall be posted in entranceways, elevators, or other conspicuous places at least 48 hours prior to the meeting of the board of directors. If there is no common entranceway for 7 or more units, the board of directors may designate one or more locations in the proximity of such units where the notices of meetings shall be posted. For purposes of this Section, "meeting of the board of directors" means any gathering of a quorum of the members of the board of directors held for the purpose of discussing business of the homeowners association or cooperative. The provisions of this Section shall apply to any homeowners association or residential cooperative situated in the State of Illinois regardless of where it may be incorporated.

*(Source: P.A. 94-1099, eff. 2-2-07.)*

#### **Sec. 108.25. Notice of directors' meetings.**

Meetings of the board of directors shall be held upon such notice as the bylaws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Unless provided otherwise in the articles of incorporation or the bylaws, neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting, except that no special meeting of directors may remove a director under Section 108.35(b) of this Act unless written notice of the proposed removal is delivered to all directors at least twenty days prior to such meeting.

*(Source: P.A. 84-1423.)*

#### **Sec. 108.30. Vacancies.**

Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control. A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his or her predecessor in office.

*(Source: P.A. 84-1423.)*

#### **Sec. 108.35. Removal of directors.**

(a) One or more of the directors may be removed, with or without cause. In the case of a corporation having a board of directors which is classified in accordance with subsection 108.10(e) of this Act, the articles of incorporation or bylaws may provide that such directors may only be removed for cause.

(b) In the case of a corporation with no members or with no members entitled to vote on directors, a director may be removed by the affirmative vote of a majority of the directors then in office present and voting at a meeting of the board of directors at which a quorum is present.

(c) In the case of a corporation with members entitled to vote for directors, no director may be removed, except as follows:

(1) A director may be removed by the affirmative vote of two-thirds of the votes present and voted, either in person or by proxy.

(2) No director shall be removed at a meeting of members entitled to vote unless the written notice of such meeting is delivered to all members entitled to vote on removal of directors. Such notice

shall state that a purpose of the meeting is to vote upon the removal of one or more directors named in the notice. Only the named director or directors may be removed at such meeting.

(3) In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no director may be removed, with or without cause, if the votes cast against his or her removal would be sufficient to elect him or her if then cumulatively voted at an election of the entire board of directors.

(4) If a director is elected by a class of voting members entitled to vote, directors or other electors, that director may be removed only by the same class of members entitled to vote, directors or electors which elected the director.

(d) The provisions of subsections (a), (b) and (c) shall not preclude the Circuit Court from removing a director of the corporation from office in a proceeding commenced either by the corporation or by members entitled to vote holding at least 10 percent of the outstanding votes of any class if the court finds (1) the director is engaged in fraudulent or dishonest conduct or has grossly abused his or her position to the detriment of the corporation, and (2) removal is in the best interest of the corporation. If the court removes a director, it may bar the director from reelection for a period prescribed by the court. If such a proceeding is commenced by a member entitled to vote, such member shall make the corporation a party defendant.

*(Source: P.A. 96-649, eff. 1-1-10.)*

#### **Sec. 108.40. Committees.**

(a) If the articles of incorporation or bylaws so provide, a majority of the directors may create one or more committees and appoint directors or such other persons as the board designates, to serve on the committee or committees. Each committee shall have two or more directors, a majority of its membership shall be directors, and all committee members shall serve at the pleasure of the board. However, committees appointed by the board or otherwise authorized by the bylaws relating to the election, nomination, qualification, or credentials of directors or other committees involved in the process of electing directors may be composed entirely of non-directors.

(b) Unless the appointment by the board of directors requires a greater number, a majority of any committee shall constitute a quorum, and a majority of committee members present and voting at a meeting at which a quorum is present is necessary for committee action. A committee may act by unanimous consent in writing without a meeting and, subject to the provisions of the bylaws or action by the board of directors, the committee by majority vote of its members shall determine the time and place of meetings and the notice required therefor.

(c) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under Section 108.05 of this Act; provided, however, a committee may not:

- (1) Adopt a plan for the distribution of the assets of the corporation, or for dissolution;
- (2) Approve or recommend to members any act this Act requires to be approved by members, except that committees appointed by the board or otherwise authorized by the bylaws relating to the election, nomination, qualification, or credentials of directors or other committees involved in

the process of electing directors may make recommendations to the members relating to electing directors;

(3) Fill vacancies on the board or on any of its committees;

(4) Elect, appoint or remove any officer or director or member of any committee, or fix the compensation of any member of a committee;

(5) Adopt, amend, or repeal the bylaws or the articles of incorporation;

(6) Adopt a plan of merger or adopt a plan of consolidation with another corporation, or authorize the sale, lease, exchange or mortgage of all or substantially all of the property or assets of the corporation; or

(7) Amend, alter, repeal or take action inconsistent with any resolution or action of the board of directors when the resolution or action of the board of directors provides by its terms that it shall not be amended, altered or repealed by action of a committee.

(d) The board of directors may create and appoint persons to a commission, advisory body or other such body which may or may not have directors as members, which body may not act on behalf of the corporation or bind it to any action but may make recommendations to the board of directors or to the officers.

*(Source: P.A. 90-188, eff. 7-24-97.)*

#### **Sec. 108.45. Informal action by directors.**

(a) Unless specifically prohibited by the articles of incorporation or bylaws, any action required by this Act to be taken at a meeting of the board of directors of a corporation, or any other action which may be taken at a meeting of the board of directors or a committee thereof, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be approved in writing by all of the directors and all of any nondirector committee members entitled to vote with respect to the subject matter thereof, or by all the members of such committee, as the case may be.

(b) The consent shall be evidenced by one or more written approvals, each of which sets forth the action taken and provides a written record of approval. All the approvals evidencing the consent shall be delivered to the secretary to be filed in the corporate records. The action taken shall be effective when all the directors or the committee members, as the case may be, have approved the consent unless the consent specifies a different effective date.

(c) Any such consent approved in writing by all the directors or all the committee members, as the case may be, shall have the same effect as a unanimous vote and may be stated as such in any document filed with the Secretary of State under this Act.

*(Source: P.A. 96-649, eff. 1-1-10; 96-994, eff. 7-2-10.)*

#### **Sec. 108.50. Officers.**

(a) A corporation shall have such officers as shall be provided in the bylaws. Officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. If the bylaws so provide, any two or more offices may be held by the same person. One officer, in this Act generally referred to as the



secretary, shall have the authority to certify the bylaws, resolutions of the members and board of directors and committees thereof, and other documents of the corporation as true and correct copies thereof.

(b) All officers and agents of the corporation, as between themselves and the corporation, shall have such express authority and perform such duties in the management of the property and affairs of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws and such implied authority as recognized by the common law from time to time.

(c) The articles of incorporation or the bylaws may provide that any one or more officers of the corporation or any other person holding a particular office outside the corporation shall be a director or directors while he or she holds that office. Unless the articles of incorporation or the bylaws provide otherwise, such director or directors shall have the same rights, duties and responsibilities as other directors.

*(Source: P.A. 84-1423.)*

#### **Sec. 108.55. Removal of Officers.**

Any officer or agent may be removed by the board of directors or other persons authorized to elect or appoint such officer or agent but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create any contract rights.

*(Source: P.A. 84-1423.)*

#### **Sec. 108.60. Director conflict of interest.**

(a) If a transaction is fair to a corporation at the time it is authorized, approved, or ratified, the fact that a director of the corporation is directly or indirectly a party to the transaction is not grounds for invalidating the transaction.

(b) In a proceeding contesting the validity of a transaction described in subsection (a), the person asserting validity has the burden of proving fairness unless:

(1) The material facts of the transaction and the director's interest or relationship were disclosed or known to the board of directors or a committee consisting entirely of directors and the board or committee authorized, approved or ratified the transaction by the affirmative votes of a majority of disinterested directors, even though the disinterested directors be less than a quorum; or

(2) The material facts of the transaction and the director's interest or relationship were disclosed or known to the members entitled to vote, if any, and they authorized, approved or ratified the transaction without counting the vote of any member who is an interested director.

(c) The presence of the director, who is directly or indirectly a party to the transaction described in subsection (a), or a director who is otherwise not disinterested, may be counted in determining whether a quorum is present but may not be counted when the board of directors or a committee of the board takes action on the transaction.

(d) For purposes of this Section, a director is "indirectly" a party to a transaction if the other party to the transaction is an entity in which the director has a material financial interest or of which the

director is an officer, director or general partner; except that if a director is an officer or director of both parties to a transaction involving a grant or contribution, without consideration, from one entity to the other, that director is not "indirectly" a party to the transaction provided the director does not have a material financial interest in the entity that receives the grant or contribution.

(e) (Blank).

*(Source: P.A. 96-649, eff. 1-1-10; 96-994, eff. 7-2-10.)*

#### **Sec. 108.65. Liability of directors in certain cases.**

(a) In addition to any other liabilities imposed by law upon directors of a corporation, they are liable as follows:

(1) The directors of a corporation who vote for or assent to any distribution not authorized by Section 109.10 or Article 12 of this Act shall be jointly and severally liable to the corporation for the amount of such distribution.

(2) If a dissolved corporation shall proceed to bar any known claims against it under Section 112.75 of this Act, the directors of such corporation who fail to take reasonable steps to cause the notice required by Section 112.75 of this Act to be given to any known creditor of such corporation shall be jointly and severally liable to such creditor for all loss and damage occasioned thereby.

(3) The directors of a corporation that conducts its affairs after the filing by the Secretary of State of articles of dissolution, otherwise than so far as may be necessary for the winding up thereof, shall be jointly and severally liable to the creditors of such corporation for all debts and liabilities of the corporation incurred in so conducting its affairs.

(b) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken is conclusively presumed to have assented to the action taken unless his or her dissent or abstention is entered in the minutes of the meeting or unless he or she files his or her written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof or forwards such dissent or abstention by registered or certified mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent or abstain does not apply to a director who voted in favor of such action.

(c) A director shall not be liable for a distribution of assets to any person in excess of the amount authorized by Section 109.10 or Article 12 of this Act if he or she relied and acted in good faith upon a balance sheet and profit and loss statement of the corporation represented to him or her to be correct by the president or the officer of such corporation having charge of its books of account, or certified by an independent public or certified public accountant or firm of such accountants to fairly reflect the financial condition of such corporation, nor shall he or she be so liable if in good faith in determining the amount available for any such distribution he or she considered the assets to be of their book value.

(d) Any director against whom a claim is asserted under this Section and who is held liable thereon, is entitled to contribution from the other directors who are likewise liable thereon. Any director against whom a claim is asserted for the improper distribution of assets of a corporation, and who is held liable thereon, is entitled to contribution from the persons who knowingly accepted or received any such distribution in proportion to the amounts received by them respectively.

*(Source: P.A. 84-1423.)*

**Sec. 108.70. Limited Liability of directors, officers, board members, and persons who serve without compensation.**

(a) No director or officer serving without compensation, other than reimbursement for actual expenses, of a corporation organized under this Act or any predecessor Act and exempt, or qualified for exemption, from taxation pursuant to Section 501(c) of the Internal Revenue Code of 1986, as amended, shall be liable, and no cause of action may be brought, for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such director or officer unless the act or omission involved willful or wanton conduct.

(b) No director of a corporation organized under this Act or any predecessor Act for the purposes identified in items (14), (19), (21) and (22) of subsection (a) of Section 103.05 of this Act, and exempt or qualified for exemption from taxation pursuant to Section 501(c) of the Internal Revenue Code of 1986, as amended, shall be liable, and no cause of action may be brought for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such director, unless: (1) such director earns in excess of \$25,000 per year from his duties as director, other than reimbursement for actual expenses; or (2) the act or omission involved willful or wanton conduct.

(b-5) Except for willful and wanton conduct, no volunteer board member serving without compensation, other than reimbursement for actual expenses, of a corporation organized under this Act or any predecessor Act and exempt, or qualified for exemption, from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, shall be liable, and no action may be brought, for damages resulting from any action of the executive director concerning the false reporting of or intentional tampering with financial records of the organization, where the actions of the executive director result in legal action.

This subsection (b-5) shall not apply to any action taken by the Attorney General (i) in the exercise of his or her common law or statutory power and duty to protect charitable assets or (ii) in the exercise of his or her authority to enforce the laws of this State that apply to trustees of a charity, as that term is defined in the Charitable Trust Act and the Solicitation for Charity Act.

(c) No person who, without compensation other than reimbursement for actual expenses, renders service to or for a corporation organized under this Act or any predecessor Act and exempt or qualified for exemption from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, shall be liable, and no cause of action may be brought, for damages resulting from an act or omission in rendering such services, unless the act or omission involved willful or wanton conduct.

(d) (Blank).

(e) Nothing in this Section is intended to bar any cause of action against the corporation or change the liability of the corporation arising out of an act or omission of any director, officer or person exempt from liability for negligence under this Section.

*(Source: P.A. 95-342, eff. 1-1-08; 96-649, eff. 1-1-10.)*

**Sec. 108.75. Indemnification of officers, directors, employees and agents; insurance.**

(a) A corporation may indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of

the fact that he or she is or was a director, officer, employee or agent of the corporation, or who is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or 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 person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation or, with respect to any criminal action or proceeding, that the person had reasonable cause to believe that his or her conduct was unlawful.

(b) A corporation may indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, provided that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the corporation, unless, and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

(c) To the extent that a present or former director, officer or employee of a corporation has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in subsections (a) and (b), or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, if that person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation.

(d) Any indemnification under subsections (a), (b), or (c) (unless ordered by a court) shall be made by the corporation only as authorized in the specific case, upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in subsections (a), (b), or (c). Such determination shall be made with respect to a person who is a director or officer of the corporation at the time of the determination: (1) by the majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, (2) by a committee of such directors, even though less than a quorum, designated by a majority vote of such directors, (3) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (4) by the members entitled to vote, if any.

(e) Expenses (including attorney's fees) incurred by an officer or director of the corporation in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding, as authorized by the board of directors in the specific case, upon receipt of an undertaking by or on behalf of such director or officer to repay such amount, unless it shall ultimately be determined that such person is entitled to be indemnified by the corporation as authorized in this Section. Such expenses (including attorney's fees) incurred by former directors and officers or other employees and agents of the corporation or by persons serving at the request of the corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid on such terms and conditions, if any, as the corporation deems appropriate.

(f) The indemnification and advancement of expenses provided by or granted under the other subsections of this Section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any by-law, agreement, vote of members or disinterested directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office. A right to indemnification or to advancement of expenses arising under a provision of the articles of incorporation or a by-law shall not be eliminated or impaired by an amendment to such provision after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such act or omission has occurred.

(g) A corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or who is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify such person against such liability under the provisions of this Section.

(h) In the case of a corporation with members entitled to vote, if a corporation indemnifies or advances expenses under subsection (b) of this Section to a director or officer, the corporation shall report the indemnification or advance in writing to the members entitled to vote with or before the notice of the next meeting of the members entitled to vote.

(i) For purposes of this Section, references to "the corporation" shall include, in addition to the surviving corporation, any merging corporation (including any corporation having merged with a merging corporation) absorbed in a merger which, if its separate existence had continued, would have had the power and authority to indemnify its directors, officers, employees or agents, so that any person who was a director, officer, employee or agent of such merging corporation, or was serving at the request of such merging corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Section with respect to the surviving corporation as such person would have with respect to such merging corporation if its separate existence had continued.

(j) For purposes of this Section, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a

director, officer, employee or agent of the corporation which imposes duties on, or involves services by such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries. A person who acted in good faith and in a manner he or she reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Section.

(k) The indemnification and advancement of expenses provided by or granted under this Section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of that person.

(l) The changes to this Section made by this amendatory Act of the 92nd General Assembly apply only to actions commenced on or after the effective date of this amendatory Act of the 92nd General Assembly.

*(Source: P.A. 97-881, eff. 8-2-12.)*

#### **Sec. 108.80. Prohibited loans to directors and officers.**

Except as permitted by subsection (e) of Section 108.75, no loan shall be made by a corporation to a director or officer except that a loan may be made to a director or officer who is employed by the corporation if authorized by a majority of the non-employed directors and either (a) in the case of a corporation organized for and holding property for any charitable, religious, eleemosynary, benevolent, educational or similar purpose, the purpose of such loan is to provide financing for the principal residence of the employed director or officer upon receipt of adequate collateral consisting of marketable real estate or securities readily capable of valuation or (b) the loan is otherwise in furtherance of the purposes of the corporation and in the ordinary course of its affairs. The directors of a corporation who vote for or assent to the making of a loan to any non-employed director or non-employed officer of the corporation, or otherwise prohibited by this Section, and any other person knowingly participating in the making of such loan, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

*(Source: P.A. 84-1423.)*

#### **Sec. 108.85. Act not exclusive.**

This Act is not an exclusive statement of the duties and responsibilities of directors and officers. Directors and officers are subject to common law and other statutory duties and responsibilities.

*(Source: P.A. 84-1423.)*

### **ARTICLE 9. DISTRIBUTIONS**

#### **Sec. 109.10. Distributions prior to dissolution.**

(a) The board of directors of a corporation may authorize, and the corporation may make, distributions of its money, property, or other assets, other than upon dissolution and final liquidation, subject to the limitations of subsection (d) of this Section, only:

- (1) To any person or organization who or which has made payments to the corporation for goods or services, as a fractional repayment of such payments, provided all such persons or organizations in any category are repaid on an equal pro rata basis; or
  - (2) To any person or organization as a repayment of his, her or its contribution of an amount not to exceed the amount of the contribution, provided that any assets held for any charitable, religious, eleemosynary, benevolent, educational or similar purpose or held upon a condition requiring return, shall continue to be so restricted. The articles of incorporation or the bylaws may provide that the membership rights of a member cease upon the repayment, in whole, of the contribution of such member.
- (b) Any payment or transfer of money, property or other assets in furtherance of any of the purposes of the corporation shall not be deemed a distribution for the purposes of this Article and this Section shall not be construed as limiting the purposes and powers of a corporation as set forth in Article 3 of this Act.
- (c) All distributions by a corporation permitted by this Section shall be at the option of the corporation only and at such amount or amounts, within the period or periods, and on such terms and conditions, not inconsistent with the purpose of the corporation and this Act, as are stated in, or fixed by the board of directors pursuant to authority granted by, the articles of incorporation or the bylaws.
- (d) No distribution under subsection (a) may be made if, after giving it effect:
- (1) The corporation would be insolvent; or
  - (2) The net assets of the corporation would be less than zero; or
  - (3) The corporation would be rendered unable to carry on its corporate purposes.
- (e) The board of directors may base a determination that a distribution may be made under subsection (d) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.
- (f) The effect of a distribution under subsection (d) is measured as of the earlier of:
- (1) The date of its authorization if payment occurs within 120 days after the date of authorization or the date of payment if payment occurs more than 120 days after the date of authorization; or
  - (2) In the case of a repayment of a contribution in which the membership rights of a member cease, the earlier of (i) the date money or other property is transferred or debt incurred by the corporation or (ii) the date the membership rights of the member cease.

*(Source: P.A. 84-1423.)*

## **ARTICLE 10. AMENDMENTS**

### **Sec. 110.05. Authority to amend articles of incorporation.**

- (a) A corporation may amend its articles of incorporation at any time and from time to time to add a new provision or to change or remove an existing provision, provided that the articles as amended contain only such provisions as are required or permitted in original articles of incorporation at the time of amendment. The articles as amended must contain all the provisions required by subsection (a)

of Section 102.10 of this Act except that the names and addresses of the initial directors may be omitted and the names of the initial registered agent or the address of the initial registered office may be omitted.

(b) A corporation whose period of duration as provided in the articles of incorporation has expired may amend its articles of incorporation to revive its articles and extend the period of corporate duration, including making the duration perpetual, at any time within 5 years after the date of expiration.

*(Source: P.A. 91-527, eff. 1-1-00.)*

#### **Sec. 110.15. Amendment by Directors.**

Where a corporation has no members, or no members entitled to vote on amendments, one or more amendments shall be adopted by the board of directors upon receiving the affirmative vote of a majority of the directors in office.

*(Source: P.A. 84-1423.)*

#### **Sec. 110.20. Amendments by Directors and Members.**

Where a corporation has members entitled to vote on amendments, one or more amendments shall be adopted in the following manner:

- (a) The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members entitled to vote on amendments which may be either an annual or a special meeting;
- (b) Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote on amendments at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of members. If such meeting be an annual meeting, the proposed amendment, or a summary as aforesaid, may be included in the notice of such annual meeting;
- (c) At such meeting, at which there is a quorum of members, a vote of the members entitled to vote on the proposed amendment shall be taken. The proposed amendment shall be adopted by receiving the affirmative vote of at least 2/3 of the votes present and voted either in person or by proxy, unless any class of members is entitled to vote as a class in respect thereof, in which event the proposed amendment shall be adopted by receiving the affirmative vote of at least two-thirds of the votes of the class present and voted either in person or by proxy;
- (d) The articles of incorporation or the bylaws of a corporation may supersede the two-thirds vote requirement of subsection (c) by specifying any smaller or larger vote requirement not less than a majority of the votes which members entitled to vote on such amendment shall vote, either in person or by proxy, at a meeting at which there is a quorum.

*(Source: P.A. 84-1423.)*

#### **Sec. 110.30. Articles of amendment.**

(a) Except as provided in Section 110.40 of this Act, the articles of amendment shall be executed and filed in duplicate in accordance with Section 101.10 of this Act and shall set forth:



- (1) The name of the corporation;
- (2) The text of each amendment adopted;
- (3) If the amendment was adopted pursuant to Section 110.15 of this Act:
  - (i) A statement that the amendment received the affirmative vote of a majority of the directors in office, at a meeting of the board of directors, and the date of the meeting; or
  - (ii) A statement that the amendment was adopted by written consent, signed by all the directors in office, in compliance with Section 108.45 of this Act;
- (4) If the amendment was adopted pursuant to Section 110.20 of this Act:
  - (i) A statement that the amendment was adopted at a meeting of members entitled to vote by the affirmative vote of the members having not less than the minimum number of votes necessary to adopt such amendment, as provided by this Act, the articles of incorporation or the bylaws, and the date of the meeting; or
  - (ii) A statement that the amendment was adopted by members entitled to vote having not less than the minimum number of votes necessary to adopt such amendment, as provided by this Act, the articles of incorporation, or the bylaws, in compliance with Section 107.10 of this Act.
- (5) If the amendment restates the articles of incorporation, the amendment shall so state and shall set forth:
  - (i) The text of the articles as restated;
  - (ii) The date of incorporation, the name under which the corporation was incorporated, subsequent names, if any, that the corporation adopted pursuant to amendment of its articles of incorporation, and the effective date of any such amendments;
  - (iii) The address of the registered office and the name of the registered agent on the date of filing the restated articles.

The articles as restated must include all the information required by subsection (a) of Section 102.10 of this Act, except that the articles need not set forth the information required by paragraphs 3, 4 or 5 thereof. If any provision of the articles of incorporation is amended in connection with the restatement, the articles of amendment shall clearly identify such amendment.

- (6) If, pursuant to Section 110.35 of this Act, the amendment is to become effective subsequent to the date on which the articles of amendment are filed, the date on which the amendment is to become effective.
- (7) If the amendment revives the articles of incorporation and extends the period of corporate duration, the amendment shall so state and shall set forth:
  - (i) The date the period of duration expired under the articles of incorporation;
  - (ii) A statement that the period of duration will be perpetual, or, if a limited duration is to be provided, the date to which the period of duration is to be extended; and

(iii) A statement that the corporation has been in continuous operation since before the date of expiration of its original period of duration.

(b) When the provisions of this Section have been complied with, the Secretary of State shall file the articles of amendment.

*(Source: P.A. 96-649, eff. 1-1-10.)*

**Sec. 110.35. Effect of amendment.**

(a) The amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly, as of the later of:

(1) The filing of the articles of amendment by the Secretary of State; or

(2) The time established under the articles of amendment, not to exceed 30 days after the filing of the articles of amendment by the Secretary of State.

(b) If the amendment is made in accordance with the provisions of Section 110.40 of this Act, upon the filing of the articles of amendment by the Secretary of State, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly, without any action thereon by the directors or members of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and members of the corporation.

(c) If the amendment restates the articles of incorporation, such restated articles of incorporation shall, upon such amendment becoming effective, supersede and stand in lieu of the corporation's preexisting articles of incorporation.

(d) If the amendment revives the articles of incorporation and extends the period of corporate duration, upon the filing of the articles of amendment by the Secretary of State, the amendment shall become effective and the corporate existence shall be deemed to have continued without interruption from the date of expiration of the original period of duration, and the corporation shall stand revived with such powers, duties and obligations as if its period of duration had not expired; and all acts and proceedings of its officers, directors and members, acting or purporting to act as such, which would have been legal and valid but for such expiration, shall stand ratified and confirmed.

(e) No amendment of the articles of incorporation of a corporation shall affect any existing cause of action in favor of or against such corporation, or any pending suit in which such corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall be abated for that reason.

*(Source: P.A. 92-33, eff. 7-1-01.)*

**Sec. 110.40. Amendment pursuant to reorganization.**

(a) The articles of incorporation of a corporation may be amended without director or member action to carry out a plan of reorganization ordered by a court of competent jurisdiction pursuant to any applicable statute of the United States if the articles after amendment contain only provisions required or permitted by Section 102.10 of this Act.

(b) The individual or individuals designated by the court shall execute, verify and deliver to the Secretary of State for filing in accordance with Section 101.10 of this Act, articles of amendment setting forth:

- (1) The name of the corporation;
- (2) The text of each amendment approved by the court;
- (3) The date of the court's order approving the articles of amendment;
- (4) The title of the reorganization proceeding in which the order was entered; and
- (5) A statement that the court had jurisdiction of the proceeding under federal statute.

*(Source: P.A. 84-1423.)*

## **ARTICLE 11. MERGER AND CONSOLIDATION**

### **Sec. 111.05. Right to merge or consolidate.**

Any two or more corporations may merge into one such corporation or consolidate into a new corporation by adopting a plan of merger or consolidation setting forth:

- (a) The names of the corporations proposing to merge or consolidate, and in the case of a merger, the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation, or in the case of a consolidation, the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;
- (b) The terms and conditions of the proposed merger or consolidation;
- (c) In the case of a merger, a statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger, or in the case of a consolidation and with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this Act; and
- (d) Such other provisions with respect to the proposed merger or consolidation as are deemed necessary or desirable, including provisions, if any, under which the proposed merger or consolidation may be abandoned prior to the filing of articles of merger or articles of consolidation by the Secretary of State.

*(Source: P.A. 84-1423.)*

### **Sec. 111.10. Merger of Domestic Corporation into Body Corporate and Politic.**

A domestic corporation which carries on athletic sports and promotes athletic interests among students of a State university with which it is affiliated may be merged into a body corporate and politic which manages and governs the State university. The domestic not-for-profit corporation and the body corporate and politic may accomplish such merger by adopting a plan of merger setting forth:

- (a) The names of the domestic corporation and the body corporate and politic which propose to merge; and the name of the body corporate and politic into which they propose to merge, which is hereinafter designated as the surviving corporation;
- (b) The terms and conditions of the proposed merger; and

(c) Such other provisions with respect to the proposed merger as are deemed necessary or desirable, including provisions, if any, under which the proposed merger may be abandoned prior to the filing of Articles of Merger in the office of the Secretary of State.

*(Source: P.A. 86-6.)*

**Sec. 111.15. Merger or consolidation by directors.**

Where a corporation has no members or no members entitled to vote on mergers or consolidations, a plan thereof shall be adopted at a meeting of the board of directors upon receiving the affirmative vote of a majority of the directors in office.

*(Source: P.A. 84-1423.)*

**Sec. 111.20. Merger or consolidation by directors and members.**

Where a corporation has members entitled to vote on mergers or consolidations, a plan thereof shall be adopted in the following manner:

(a) The board of directors shall adopt a resolution approving the plan and directing that it be submitted to a vote at a meeting of members entitled to vote on mergers or consolidations, which may be either an annual or a special meeting.

(b) Written or printed notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of members. If such meeting be an annual meeting, the proposed plan, or a summary as aforesaid, may be included in the notice of such annual meeting.

(c) At such meeting, at which there is a quorum of members, a vote of the members entitled to vote on the proposed plan shall be taken. The proposed plan shall be adopted by receiving the affirmative vote of at least two-thirds of the votes present and voted either in person or by proxy, unless any class of members is entitled to vote as a class in respect thereof, in which event the proposed plan shall be adopted by receiving the affirmative vote of at least 2/3 of the votes of the class present and voted either in person or by proxy.

(d) The articles of incorporation or the bylaws of a corporation may supersede the two-thirds vote requirement of subsection (c) by specifying any smaller or larger vote requirement not less than a majority of the votes which members entitled to vote on such merger or consolidation shall vote, either in person or by proxy, at a meeting at which there is a quorum.

*(Source: P.A. 84-1423.)*

**Sec. 111.25. Articles of merger or consolidation.**

(a) Articles of merger or consolidation shall be executed by each corporation and filed in duplicate in accordance with Section 101.10 of this Act and shall set forth:

(1) the name of each corporation;

(2) the plan of merger or consolidation;

(3) as to each corporation where the plan of merger or consolidation was adopted pursuant Section 111.15 of this Act:

(i) a statement that the plan received the affirmative vote of a majority of the directors in office, at a meeting of the board of directors, and the date of the meeting; or

(ii) a statement that the plan was adopted by written consent, signed by all the directors in office, in compliance with Section 108.45 of this Act; and

(4) as to each corporation where the plan of merger or consolidation was adopted pursuant Section 111.20 of this Act:

(i) a statement that the plan was adopted at a meeting of members by the affirmative vote of members having not less than the minimum number of votes necessary to adopt the plan, as provided by this Act, the articles of incorporation, or the bylaws, and the date of the meeting; or

(ii) a statement that the plan was adopted by written consent, signed by members having not less than the minimum number of votes necessary to adopt the plan, as provided by this Act, the articles of incorporation or the bylaws, in compliance with Section 107.10 of this Act.

(b) When the provisions of this Section have been complied with, the Secretary of State shall file the articles of merger or consolidation.

*(Source: P.A. 91-357, eff. 7-29-99; 92-33, eff. 7-1-01.)*

### **Sec. 111.35. Merger or consolidation of domestic and foreign corporations.**

One or more domestic corporations and one or more foreign corporations may be merged or consolidated in the following manner, provided such merger or consolidation is permitted by the laws of the State or country under which each such foreign corporation is organized:

(a) Each domestic corporation shall comply with the provisions of this Act with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the State or country under which it is organized.

(b) If the surviving or new corporation, as the case may be, is to be governed by the laws of any State or country other than this State, it shall comply with the provisions of this Act with respect to foreign corporations if it is to conduct its affairs in this State, and in every case it shall file with the Secretary of State of this State:

(1) An agreement that it may be served with process in this State in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation; and

(2) An irrevocable appointment of the Secretary of State of this State as its agent to accept service of process in any such proceeding.

(c) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, except, if the surviving or new corporation is to be governed by the laws of any State or country other than this State, only to the extent that the laws of such other State or country shall otherwise provide.

*(Source: P.A. 84-1423.)*

**Sec. 111.37. Merger of domestic corporations and domestic or foreign corporations for profit.**

(a) One or more domestic corporations and one or more domestic or foreign corporations for profit may merge into one of such domestic corporations or consolidate into a new domestic corporation, provided that such merger or consolidation is permitted by the laws of the state or country under which each such foreign corporation for profit is organized.

(b) Each domestic corporation shall comply with the provisions of this Act with respect to the merger or consolidation of domestic corporations, each domestic corporation for profit shall comply with the provisions of the Business Corporation Act of 1983, as amended, with respect to merger or consolidation of domestic corporations for profit, each foreign corporation for profit shall comply with the laws of the State or country under which it is organized, and each foreign corporation for profit having a certificate of authority to transact business in this State under the provisions of the Business Corporation Act of 1983, as amended, shall comply with the provisions of such Act with respect to merger or consolidation of foreign corporations for profit.

(c) The plan of merger or consolidation shall set forth, in addition to all matters required by Section 111.05 of this Act, the manner and basis of converting shares of each merging or consolidating domestic or foreign corporation for profit into membership or other interests of the surviving domestic corporation, or into cash, or into property, or into any combination of the foregoing.

(d) The effect of a merger or consolidation under this Section shall be the same as in the case of a merger or consolidation of domestic corporations.

*(Source: P.A. 93-59, eff. 7-1-03.)*

**Sec. 111.40. Effective date of merger or consolidation.**

The merger or consolidation shall become effective upon the filing of the articles of merger or consolidation by the Secretary of State or on a later specified date, not more than 30 days subsequent to the filing of the articles of merger or consolidation by the Secretary of State, as may be provided for in the plan.

*(Source: P.A. 92-33, eff. 7-1-01.)*

**Sec. 111.45. (Repealed).**

*(Source: P.A. 92-33, eff. 7-1-01. Repealed by P.A. 96-1121, eff. 1-1-11.)*

**Sec. 111.50. Effect of merger or consolidation.**

When such merger or consolidation has been effected:

(a) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, is that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, is the new corporation provided for in the plan of consolidation.

(b) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(c) Such surviving or new corporation has all the rights, privileges, immunities, and powers and is subject to all the duties and liabilities of a corporation organized under this Act; however, this subsection (c) does not apply to a surviving corporation which manages and governs a State university.

(d) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, of a public or private nature, of each of the merging or consolidating corporations; and all property, real, personal, and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(e) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporations shall be impaired by such merger or consolidation.

(f) In case of a merger, the articles of incorporation of the surviving corporation are deemed to be amended to the extent, if any, that changes in its articles are stated in the articles of merger; and, in the case of a consolidation, the articles of incorporation of the new corporation are set forth in the articles of consolidation.

*(Source: P.A. 86-6; 86-697; 86-1028.)*

**Sec. 111.55. Sale, lease or exchange of assets in usual and regular conduct of its affairs; mortgage or pledge of assets.**

The sale, lease, exchange or other disposition of all, or substantially all, the property and assets of a corporation, when made in the usual and regular course of the conduct of the affairs of the corporation, and a pledge or mortgage of the property and assets of a corporation, may be made upon such terms and conditions and for such considerations, which may consist, in whole or in part, of money or property, real or personal, including shares of any other corporation for profit, domestic or foreign, as shall be authorized by its board of directors; and in such case no authorization or consent of the members entitled to vote shall be required.

*(Source: P.A. 84-1423.)*

**Sec. 111.60. Sale, lease or exchange of assets, other than in usual and regular conduct of its affairs.**

A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation, if not made in the usual and regular course of the conduct of the affairs of the corporation, may be made upon such terms and conditions and for such consideration, which may consist, in whole or in part, of money or property, real or personal, including shares of any other corporation, domestic or foreign, as may be authorized in the following manner:

(a) Where a corporation has no members or no members entitled to vote on the sale, lease or exchange of assets, such action may be adopted by the board of directors upon receiving the affirmative vote of a majority of the directors in office.

(b) Where a corporation has members entitled to vote on the sale, lease or exchange of assets, such action may be adopted if:

(1) The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of members entitled to vote which may be either an annual or a special meeting.

(2) Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote within the time and in the manner provided by this Act for the giving of notice of meetings of members. If such meeting be an annual meeting, such purpose may be included in the notice of such annual meeting.

(3) At such meeting the members entitled to vote on such matter may authorize such sale, lease, exchange, or other disposition and fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of two-thirds of the votes present and voted either in person or by proxy unless any class of members is entitled to vote at a class in respect thereof, in which event the proposed action shall be adopted by receiving the affirmative vote of at least two-thirds of the votes of the class present and voted either in person or by proxy.

(4) After such authorization by a vote of members, the board of directors nevertheless, in its discretion, may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members entitled to vote.

(5) The articles of incorporation or the bylaws of a corporation may supersede the two-thirds vote requirement of this Section by specifying any smaller or larger vote requirement not less than a majority of the votes which members entitled to vote on the matter shall vote, either in person or by proxy, at a meeting at which there is a quorum.

*(Source: P.A. 84-1423.)*

## **ARTICLE 12. DISSOLUTION**

### **Sec. 112.05. Voluntary dissolution by directors.**

Where a corporation has no members or no members entitled to vote on dissolution, the dissolution of a corporation may be authorized by a majority of the directors provided that:

(a) No debts of the corporation remain unpaid.

(b) Written notice of the election to dissolve the corporation has been given to all directors, not less than three days before the execution of articles of dissolution.

*(Source: P.A. 84-1423.)*



**Sec. 112.10. Voluntary dissolution by written consent of members entitled to vote.**

Where a corporation has members entitled to vote on dissolution, the dissolution of a corporation may be authorized pursuant to Section 107.10 of this Act. Dissolution pursuant to the Section does not require any vote of the directors of the corporation.

*(Source: P.A. 84-1423.)*

**Sec. 112.15. Voluntary dissolution by vote of members entitled to vote.**

Where a corporation has members entitled to vote on dissolution, the dissolution of a corporation may be authorized by a vote of members entitled to vote in the following manner:

- (a) The board of directors shall adopt a resolution, which may be with or without their recommendation, proposing that the corporation be dissolved voluntarily, and directing that the question of such dissolution be submitted to a vote at a meeting of members entitled to vote on dissolution, if any, which may be either an annual or special meeting.
- (b) Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the voluntary dissolution of the corporation, shall be given to each member entitled to vote on dissolution within the time and in the manner provided in this Act for the giving of notice of meetings of members. If such meeting be an annual meeting, such purpose may be included in the notice of such annual meeting.
- (c) At such meeting a vote of the members entitled to vote on dissolution shall be taken on the resolution to dissolve voluntarily the corporation. The resolution shall be adopted by receiving the affirmative vote of at least two-thirds of the votes present and voted either in person or by proxy, unless any class of members is entitled to vote as a class in respect thereof, in which event the proposed action shall be adopted by receiving the affirmative vote of at least two-thirds of the votes of the class present and voted either in person or by proxy.
- (d) The articles of incorporation or the bylaws of any corporation may supersede the two-thirds vote requirement of subsection (c) by specifying any smaller or larger vote requirement not less than majority of the votes which members entitled to vote on dissolution shall vote, either in person or by proxy, at a meeting at which there is a quorum.

*(Source: P.A. 84-1423.)*

**Sec. 112.16. Distribution of assets.**

The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

- (a) All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;
- (b) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;
- (c) Assets held for a charitable, religious, eleemosynary, benevolent, educational or similar use, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall

be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this Act;

(d) To the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others, other assets, if any, shall be distributed in accordance with such provisions;

(e) Any remaining assets may be distributed to such societies, organizations or domestic or foreign corporations, whether for profit or not for profit, as may be specified in a plan of distribution adopted as provided in Section 112.17 of this Act.

*(Source: P.A. 84-1423.)*

### **Sec. 112.17. Plan of distribution.**

A plan providing for the distribution of assets, not inconsistent with the provisions of this Act, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this Act requires a plan of distribution, in the following manner:

(a) Where there are members having voting rights on dissolution, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan of distribution or a summary thereof shall be delivered to each member entitled to vote at such meeting, within the time and in the manner provided in this Act for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving the affirmative vote of at least two-thirds of the votes present and voted either in person or by proxy, unless any class of member is entitled to vote as a class in respect thereof, in which event the proposed plan of distribution shall be adopted by receiving the affirmative vote of at least two-thirds of the votes of the class present and voted either in person or by proxy. The articles of incorporation or the bylaws may supersede the two-thirds vote requirement of this subsection by specifying any smaller or larger vote requirement not less than a majority of the votes which members entitled to vote on such matters shall vote, either in person or by proxy at a meeting at which there is a quorum.

(b) Where there are no members having voting rights, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

*(Source: P.A. 84-1423.)*

### **Sec. 112.20. Articles of dissolution.**

(a) When a voluntary dissolution has been authorized as provided by this Act, articles of dissolution shall be executed and filed in duplicate in accordance with Section 101.10 of this Act and shall set forth:

- (1) The name of the corporation.
- (2) The date dissolution was authorized.

(3) A post-office address to which may be mailed a copy of any process against the corporation that may be served on the Secretary of State.

(4) Where dissolution is authorized pursuant to Section 112.05 of this Act:

(i) A statement that the dissolution received the affirmative vote of a majority of the directors in office, at a meeting of the board of directors, and the date of the meeting; or

(ii) A statement that the dissolution was adopted by written consent, signed by all the directors in office, in compliance with Section 108.45 of this Act.

(5) If the dissolution was adopted pursuant to Section 112.10 or 112.15 of this Act:

(i) A statement that the dissolution was adopted at a meeting of members by the affirmative vote of the members having not less than the minimum number of votes necessary to adopt the dissolution, as provided by this Act, the articles of incorporation, or the bylaws, and the date of the meeting; or

(ii) A statement that the dissolution was adopted by written consent, signed by members having not less than the minimum number of votes necessary to adopt the dissolution, as provided by this Act, the articles of incorporation, or the bylaws, in compliance with Section 107.10 of this Act.

(b) When the provisions of this Section have been complied with, the Secretary of State shall file the articles of dissolution.

(c) The dissolution is effective on the date of the filing of the articles thereof by the Secretary of State.

*(Source: P.A. 92-33, eff. 7-1-01.)*

#### **Sec. 112.25. Revocation of Dissolution.**

(a) A corporation may revoke its dissolution within 60 days of its effective date if the corporation has not begun to distribute its assets or has not commenced a proceeding for court supervision of its winding up under Section 112.50 of this Act.

(b) The corporation's board of directors may revoke the dissolution without action by members entitled to vote on dissolution.

(c) Within 60 days after the dissolution has been revoked by the corporation, articles of revocation of dissolution shall be executed and filed in duplicate in accordance with Section 101.10 of this Act and shall set forth:

(1) The name of the corporation;

(2) The effective date of the dissolution that was revoked;

(3) A statement that the corporation has not begun to distribute its assets nor has it commenced a proceeding for court supervision of its winding up;

(4) The date the revocation of dissolution was authorized;

(5) A statement that the corporation's board of directors revoked the dissolution.

(d) When the provisions of this Section have been complied with, the Secretary of State shall file the articles of revocation of dissolution. Failure to file the revocation of dissolution as required in subsection (c) hereof shall not be grounds for the Secretary of State to reject the filing, but the corporation filing beyond the time period shall pay a penalty as prescribed by this Act.

(e) The revocation of dissolution is effective on the date of the filing of the articles thereof by the Secretary of State and shall relate back and take effect as of the date of dissolution and the corporation may resume conducting affairs as if dissolution had never occurred.

*(Source: P.A. 92-33, eff. 7-1-01.)*

### **Sec. 112.30. Effect of dissolution.**

(a) Dissolution of a corporation terminates its corporate existence and a dissolved corporation shall not thereafter conduct any affairs except that necessary to wind up and liquidate its affairs, including:

- (1) Collecting its assets;
- (2) Disposing of its assets that will not be distributed in kind;
- (3) Giving notice in accordance with Section 112.75 of this Act and discharging or making provision for discharging its liabilities;
- (4) Distributing its remaining assets in accordance with this Act; and
- (5) Doing such other acts as are necessary to wind up and liquidate its affairs.

(b) After dissolution, a corporation may transfer good and merchantable title to its assets as authorized by its board of directors or in accordance with its bylaws.

(c) Dissolution of a corporation does not:

- (1) Transfer title to the corporation's assets;
- (2) Effect any change in the bylaws of the corporation or otherwise affect the regulation of the affairs of the corporation except that all action shall be directed to winding up the affairs of the corporation;
- (3) Prevent suit by or against the corporation in its corporate name;
- (4) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution.

*(Source: P.A. 84-1423.)*

### **Sec. 112.35. Grounds for administrative dissolution.**

The Secretary of State may dissolve any corporation administratively if:

- (a) It has failed to file its annual report as required by this Act before the first day of the anniversary month of the corporation of the year in which such annual report becomes due;
- (b) It has failed to file in the office of the Secretary of State any report after the expiration of the period prescribed in this Act for filing such report;

- (c) It has failed to pay any fees or charges prescribed by this Act;
- (d) It has failed to appoint and maintain a registered agent in this State;
- (e) It has misrepresented any material matter in any application, report, affidavit, or other document filed by the corporation pursuant to this Act; or
- (f) The Secretary of State receives notification from a local liquor commissioner, pursuant to Section 4-4(3) of "The Liquor Control Act of 1934," as now or hereafter amended, that an organization incorporated under this Act and functioning as a club has violated that Act by selling or offering for sale at retail alcoholic liquors without a retailer's license.

*(Source: P.A. 92-33, eff. 7-1-01.)*

**Sec. 112.40. Procedure for administrative dissolution.**

- (a) After the Secretary of State determines that one or more grounds exist under Section 112.35 of this Act for the administrative dissolution of a corporation, he or she shall send by regular mail to each delinquent corporation a Notice of Delinquency to its registered office, or, if the corporation has failed to maintain a registered office, then to the president or other principal officer at the last known office of said officer.
- (b) If the corporation does not correct the default within 90 days following such notice, the Secretary of State shall thereupon dissolve the corporation by issuing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate in his or her office and mail one copy to the corporation at its registered office or, if the corporation has failed to maintain a registered office, then to the president or other principal officer at the last known office of said officer.
- (c) The administrative dissolution of a corporation terminates its corporate existence and such a dissolved corporation shall not thereafter carry on any affairs, provided however, that such a dissolved corporation may take all action authorized under Section 112.75 of this Act or necessary to wind up and liquidate its affairs under Section 112.30 of this Act.

*(Source: P.A. 96-1121, eff. 1-1-11.)*

**Sec. 112.43. Administrative dissolution; corporate name.**

The Secretary of State shall not allow another corporation to use the name of a domestic corporation that has been administratively dissolved until 3 years have elapsed following the date of issuance of the certificate of dissolution. If the domestic corporation that has been administratively dissolved is reinstated within 3 years after the date of issuance of the certificate of dissolution, the domestic corporation shall continue under its previous name without impacting its continuous legal status, unless the corporation petitions to change its name upon reinstatement.

*(Source: P.A. 95-507, eff. 8-28-07.)*

**Sec. 112.45. Reinstatement following administrative dissolution.**

- (a) A domestic corporation administratively dissolved under Section 112.40 of this Act may be reinstated by the Secretary of State following the date of issuance of the certificate of dissolution upon:

- (1) The filing of an application for reinstatement;
  - (2) The filing with the Secretary of State by the corporation of all reports then due and theretofore becoming due;
  - (3) The payment to the Secretary of State by the corporation of all fees and penalties then due and theretofore becoming due.
- (b) The application for reinstatement shall be executed and filed in duplicate in accordance with Section 101.10 of this Act and shall set forth:
- (1) The name of the corporation at the time of the issuance of the certificate of dissolution;
  - (2) If such name is not available for use as determined by the Secretary of State at the time of filing the application for reinstatement, the name of the corporation as changed; provided, however, that any change of name is properly effected pursuant to Section 110.05 and Section 110.30 of this Act;
  - (3) The date of the issuance of the certificate of dissolution;
  - (4) The address, including street and number, or rural route number, of the registered office of the corporation upon reinstatement thereof, and the name of its registered agent at such address upon the reinstatement of the corporation, provided however, that any change from either the registered office or the registered agent at the time of dissolution is properly reported pursuant to Section 105.10 of this Act.
- (c) When a dissolved corporation has complied with the provisions of this Section, the Secretary of State shall file the application for reinstatement.
- (d) Upon the filing of the application for reinstatement, the corporate existence shall be deemed to have continued without interruption from the date of the issuance of the certificate of dissolution, and the corporation shall stand revived with such powers, duties and obligations as if it had not been dissolved; and all acts and proceedings of its officers, directors and members, acting or purporting to act as such, which would have been legal and valid but for such dissolution, shall stand ratified and confirmed.

*(Source: P.A. 94-605, eff. 1-1-06.)*

### **Sec. 112.50. Grounds for judicial dissolution.**

A Circuit Court may dissolve a corporation:

- (a) In an action by the Attorney General, if it is established that:
- (1) the corporation filed its articles of incorporation through fraud;
  - (2) the corporation has continued to exceed or abuse the authority conferred upon it by law, or has continued to violate the law, after notice of the same has been given to such corporation, either personally or by registered mail;
  - (3) any interrogatory propounded by the Secretary of State to the corporation, its officers or directors, as provided in this Act, has been answered falsely or has not been answered fully within 30 days after the mailing of such interrogatories by the Secretary of State or within such extension of time as shall have been authorized by the Secretary of State;

(4) the corporation has solicited money and failed to use the money for the purpose which it was solicited, or has fraudulently solicited money or fraudulently used the money solicited; or

(5) the corporation has substantially and willfully violated the provisions of the Consumer Fraud and Deceptive Business Practices Act.

(b) In an action by a member entitled to vote, or a director, if it is established that:

(1) the directors are deadlocked, whether because of even division in the number thereof or because of greater than majority voting requirements in the articles of incorporation or the bylaws, in the management of the corporate affairs; the members are unable to break the deadlock; and irreparable injury to the corporation is thereby caused or threatened;

(2) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive or fraudulent;

(3) the corporate assets are being misapplied or wasted; or

(4) the corporation is unable to carry out its purposes.

(c) In an action by a creditor, if it is established that:

(1) the creditor's claim has been reduced to judgment, the judgment has been returned unsatisfied, and the corporation is insolvent; or

(2) the corporation has admitted in writing that the creditor's claim is due and owing, and the corporation is insolvent.

(d) In an action by the corporation to dissolve under court supervision, if it is established that the corporation is unable to carry out its purposes.

*(Source: P.A. 96-66, eff. 1-1-10; 96-1000, eff. 7-2-10.)*

### **Sec. 112.55. Alternative remedies to judicial dissolution.**

(a) In either an action for dissolution pursuant to Section 112.50 of this Act or in an action which alleges the grounds for dissolution set forth in Section 112.50 of this Act but which does not seek dissolution, the Circuit Court, in lieu of dismissing the action or ordering dissolution, may retain jurisdiction and:

(1) Appoint a provisional director; or

(2) Appoint a custodian.

(b) A provisional director may be appointed in the discretion of the court if it appears that such action by the court will remedy the grounds alleged by the complaining director or member entitled to vote to support the jurisdiction of the court under Section 112.50 of this Act. A provisional director may be appointed notwithstanding the fact that there is no vacancy on the board of directors and shall have all the rights and powers of a duly elected director, including the right to notice of and to vote at meetings of directors, until such time as the provisional director is removed by order of court or, unless otherwise ordered by court, removed by a vote of the members sufficient either to elect a majority of the board of directors or if greater than majority voting is required by the articles of incorporation or the bylaws, to elect the requisite number of directors needed to take action.

(c) A custodian may be appointed in the discretion of the court if it appears that such action by the court will remedy the grounds alleged by the complaining director or member entitled to vote to support the jurisdiction of the court under Section 112.50 of this Act. Subject to any limitations which the court imposes, a custodian shall be entitled to exercise all the powers of the corporation's board of directors and officers to the extent necessary to manage the affairs of the corporation to the general advantage of its creditors and in furtherance of its purposes, until such time as such custodian shall be removed by order of court or, unless otherwise ordered by the court, removed by a vote of the members sufficient either to elect a majority of the board of directors or, if greater than majority voting is required by the articles of incorporation or the bylaws, to elect the requisite number of directors needed to take action. Such powers may be exercised directly, or through or in conjunction with the corporation's board of directors or officers, in the discretion of the custodian or as the court may order.

(d) Any custodian or provisional director shall report from time to time to the court concerning the matter complained of, or the status of the deadlock, if any, and of the status of the corporation's affairs, as the court shall direct. No custodian or provisional director shall be liable for any action taken or decision made in good faith. In addition, the custodian or provisional director shall submit to the court, if so directed, recommendations as to the appropriate disposition of the action. Whenever a custodian or provisional director is appointed, any officer or director of the corporation may, from time to time, petition the court for instructions clarifying the duties and responsibilities of such officer or director.

(e) In any proceeding under this Section, the court shall allow reasonable compensation to the custodian or provisional director for services rendered and reimbursement or direct payment of reasonable costs and expenses, which amounts shall be paid by the corporation.

(f) If the court determines that any party in an action commenced under Section 112.50 of this Act has acted arbitrarily, vexatiously, or not in good faith in such action or in connection with any alternative relief provided in this Section, the court may, in its discretion, award attorneys' fees and other reasonable expenses to the other parties to the action who have been affected adversely thereby.

*(Source: P.A. 84-1423.)*

#### **Sec. 112.60. Practice in actions for judicial dissolution or removal and for alternative remedies.**

(a) The practice in actions for judicial dissolution or removal shall be the same as in other civil actions except as may be otherwise provided in this Act. Every action for judicial dissolution or removal shall be commenced in the Circuit Court of the county in which either the registered office or principal office of the corporation is located. Summons shall issue and be served as in other civil actions.

(b) In an action brought by the Attorney General under subsection (a) of Section 112.50 of this Act, if process is returned not found, the Attorney General shall cause publication to be made as in other civil actions in a newspaper of general circulation published in the county in which the action is filed. The publication shall contain a notice of the pendency of such action, the title of the court, the title of the case, and the date on or after which default may be entered. The Attorney General may include in one notice the names of any number of corporations against which actions are then pending in the same court. The Attorney General shall cause a copy of such notice to be mailed to the corporation at its registered office within 10 days after the first publication thereof. The certificate of the Attorney General of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for two consecutive weeks and the first publication thereof may



begin at any time after summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than 30 days after the first publication of such notice.

(c) It is not necessary to make members of the corporation sought to be judicially dissolved parties to any such action or proceeding unless relief is sought against them personally. The court, in its discretion, may order that the members be made parties.

(d) The circuit court in an action for judicial dissolution may issue injunctions, appoint an interim receiver with such powers and duties as the court, from time to time, may direct, and take such other action as is necessary or desirable to preserve the corporate assets and carry on the affairs of the corporation until a full hearing can be had.

(e) Upon a hearing and after finding that grounds for judicial dissolution exist, and after such notice as the court may direct to be given to all parties to the proceeding and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by members. Such liquidating receiver shall have authority, subject to order of court, to sell, convey, and dispose of all or any part of the assets of the corporation, either at public or private sale, and to take such other action as is necessary to wind up and liquidate the corporation's affairs under Section 112.30 of this Act and to notify known claimants under Section 112.75 of this Act. The order appointing such liquidating receiver shall state his or her powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(f) A receiver of a corporation appointed under the provisions of this Section shall have authority to sue and defend in all courts in his or her own name as receiver of such corporation.

(g) A receiver shall in all cases be a resident of this State or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to conduct affairs in this State, and shall give such bond as the court may direct with such sureties as the court may require.

(h) During the pendency of the action, the court may redesignate a receiver as a custodian, or a custodian as a receiver, if such would be to the general advantage of the corporation or its creditors.

(i) The court shall allow reasonable compensation to the receiver for services rendered and reimbursement or direct payment of reasonable expenses from the assets of the corporation or the proceeds of sale of the assets.

(j) The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

(1) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

(2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with such requirements;

(3) Assets held for a charitable, religious, eleemosynary, benevolent, educational or similar use, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution or

liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct;

(4) To the extent that the articles of incorporation or the bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others, other assets, if any, shall be distributed in accordance with such provisions;

(5) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this Act, or where no plan of distribution has been adopted, as the court may direct.

*(Source: P.A. 84-1423.)*

### **Sec. 112.65. Order of dissolution.**

(a) If, after a hearing, the court determines that one or more grounds for judicial dissolution described in Section 112.50 of this Act exists, it may enter an order dissolving the corporation and the clerk of the court shall deliver a certified copy of the order to the Secretary of State, who shall file the order.

(b) After entering the order of dissolution, the court shall direct the winding up and liquidation of the corporation's affairs in accordance with Sections 112.16 and 112.30 of this Act and the notification of its known claimants in accordance with Section 112.75 of this Act and shall retain jurisdiction until the same is complete.

*(Source: P.A. 96-1121, eff. 1-1-11.)*

### **Sec. 112.70. Deposit of amount due.**

Upon the distribution of the assets of a corporation, the distributive portion to which a person would be entitled who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be presumed abandoned and reported and delivered to the State Treasurer and become subject to the provision of the Uniform Disposition of Unclaimed Property Act. In the event such distribution be made other than in cash, such distributive portion of the assets shall be reduced to cash before being so reported and delivered.

*(Source: P.A. 91-16, eff. 7-1-99.)*

### **Sec. 112.75. Known claims against dissolved corporation.**

(a) A dissolved corporation may bar any known claim against it, its directors, officers, employees or agents, or its members, by following the procedures set forth in subsections (b) and (c) of this Section. A claimant that does not deliver its claim by the deadline established pursuant to subsection (b) or that does not file suit by the deadline established pursuant to subsection (c) shall have no further rights against the dissolved corporation, its directors, officers, employees or agents, or its members.

(b) Within 60 days from the effective date of dissolution, the dissolved corporation shall send a notification to the claimant setting forth the following information:

(1) The corporation has been dissolved and the effective date thereof;

(2) The mailing address to which the claimant must send its claim and the essential information to be submitted with the claim;

(3) The deadline, not less than 120 days from the effective date of dissolution, by which the dissolved corporation must receive the claim; and

(4) A statement that the claim will be barred if not received by the deadline.

(c) If, after complying with the procedure in subsection (b), the dissolved corporation rejects the claim in whole or in part, the dissolved corporation shall notify the claimant of such rejection and shall also notify the claimant that the claim shall be barred unless the claimant files suit to enforce the claim within a deadline not less than 90 days from the date of the rejection notice.

(d) For purposes of this Section, "claim" does not include any contingent liability or a claim arising after the effective date of dissolution or a claim arising from the failure of the corporation to pay any tax, penalty, or interest related to any tax or penalty.

*(Source: P.A. 85-299.)*

### **Sec. 112.80. Survival of remedy after dissolution.**

The dissolution of a corporation either (1) by filing articles of dissolution in accordance with Section 112.20 of this Act, (2) by the issuance of a certificate of dissolution in accordance with Section 112.40 of this Act, (3) by a judgment of dissolution by a Circuit Court of this State, or (4) by expiration of its period of duration, shall not take away nor impair any remedy available to or against such corporation, its directors, members or persons receiving distributions, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name.

*(Source: P.A. 92-33, eff. 7-1-01.)*

## **ARTICLE 13. FOREIGN CORPORATIONS**

### **Sec. 113.05. Admission of foreign corporation.**

A foreign corporation organized not for profit, before it conducts any affairs in this State, shall procure authority so to do from the Secretary of State. A foreign corporation organized not for profit, upon complying with the provisions of this Act, may secure from the Secretary of State the authority to conduct affairs in this State. A foreign corporation shall not be denied authority by reason of the fact that the laws of the state under which such corporation is organized governing its organization and internal affairs differ from the laws of this State, and nothing in this Act contained shall be construed to authorize this State to regulate the organization or the internal affairs of such corporation.

*(Source: P.A. 92-33, eff. 7-1-01.)*

### **Sec. 113.10. Powers of foreign corporation.**

No foreign corporation shall conduct in this State any affairs which a corporation organized under the laws of this State is not permitted to conduct. A foreign corporation which shall have received authority to conduct affairs under this Act shall, until a certificate of revocation has been issued or an application for withdrawal shall have been filed as provided in this Act, enjoy the same, but no greater, rights and

privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such authority is granted; and, except as in Section 113.05 of this Act otherwise provided with respect to the organization and internal affairs of a foreign corporation and except as elsewhere in this Act otherwise provided, shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character.

*(Source: P.A. 92-33, eff. 7-1-01.)*

**Sec. 113.15. Application for authority.**

(a) A foreign corporation, in order to procure authority to conduct affairs in this State, shall execute and file in duplicate an application therefor, in accordance with Section 101.10 of this Act, and shall also file a copy of its articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the state or country wherein it is incorporated. Such application shall set forth:

(1) The name of the corporation, with any additions thereto required in order to comply with Section 104.05 of this Act together with the State or country under the laws of which it is organized;

(2) The date of its incorporation and the period of its duration;

(3) The address, including street and number, if any, of its principal office;

(4) The address, including street and number, or rural route number, of its proposed registered office in this State, and the name of its proposed registered agent in this State at such address;

(5) (Blank);

(6) The purpose or purposes for which it was organized which it proposes to pursue in the conduct of affairs in this State;

(7) The names and respective addresses, including street and number, or rural route number, of its directors and officers;

(8) With respect to any foreign corporation a purpose of which is to function as a club, as defined in Section 1-3.24 of "The Liquor Control Act of 1934," as now or hereafter amended, a statement that it will comply with the State and local laws and ordinances relating to alcoholic liquors; and

(9) Such additional information as may be necessary or appropriate in order to enable the Secretary of State to determine whether such corporation is entitled to be granted authority to conduct affairs in this State.

(b) Such application shall be made on forms prescribed and furnished by the Secretary of State.

(c) When the provisions of this Section have been complied with, the Secretary of State shall file the application for authority.

*(Source: P.A. 92-33, eff. 7-1-01.)*

**Sec. 113.20. Effect of authority.**

Upon the filing of the application for authority by the Secretary of State, the corporation shall have the right to conduct affairs in this State for those purposes set forth in its application, subject, however, to the right of this State to revoke such right to conduct affairs in this State as provided in this Act.

*(Source: P.A. 96-66, eff. 1-1-10.)*

**Sec. 113.25. Change of name by foreign corporation.**

Whenever a foreign corporation which is admitted to conduct affairs in this State shall change its name to one under which authority to conduct affairs in this State would not be granted to it on application therefor, the authority of such corporation to conduct affairs in this State shall be suspended and it shall not thereafter conduct any affairs in this State until it has changed its name to a name which is available to it under the laws of this State or until it has adopted an assumed corporate name in accordance with Section 104.15 of this Act.

*(Source: P.A. 92-33, eff. 7-1-01.)*

**Sec. 113.30. Amendment to articles of incorporation of foreign corporation.**

Each foreign corporation authorized to conduct affairs in this State, whenever its articles of incorporation are amended, shall forthwith file in the office of the Secretary of State a copy of such amendment duly authenticated by the proper officer of the State or country under the laws of which such corporation is organized; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in conducting affairs in this State, nor authorize such corporation to conduct affairs in this State under any other name than the name set forth in its application for authority, nor extend the duration of its corporate existence.

*(Source: P.A. 92-33, eff. 7-1-01.)*

**Sec. 113.35. Merger of foreign corporation authorized to conduct affairs in this state.**

Whenever a foreign corporation authorized to conduct affairs in this State shall be a party to a statutory merger permitted by the laws of the state or country under which it is organized, and such corporation shall be the surviving corporation, it shall forthwith file with the Secretary of State a copy of the articles of merger duly authenticated by the proper officer of the state or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either new or amended authority to conduct affairs in this State unless the name of such corporation or the duration of its corporate existence be changed thereby or unless the corporation desires to pursue in this State other or additional purposes than those which it is then authorized to pursue in this State.

*(Source: P.A. 92-33, eff. 7-1-01.)*

**Sec. 113.40. Amended authority.**

A foreign corporation authorized to conduct affairs in this State shall secure amended authority to do so in the event it changes its corporate name, changes the duration of its corporate existence, or desires to pursue in this State other or additional purposes than those set forth in its prior application for authority, by making application to the Secretary of State.

The application shall set forth:

- (1) The name of the corporation, with any additions required in order to comply with Section 104.05 of this Act, together with the state or country under the laws of which it is organized.
- (2) The change to be effected.

*(Source: P.A. 92-33, eff. 7-1-01; 93-59, eff. 7-1-03.)*

### **Sec. 113.45. Withdrawal of foreign corporation.**

A foreign corporation authorized to conduct affairs in this State may withdraw from this State upon filing with the Secretary of State an application for withdrawal. In order to procure such withdrawal, such foreign corporation shall either:

- (a) Execute and file in duplicate, in accordance with Section 101.10 of this Act, an application for withdrawal and a final report which shall set forth:
  - (1) That it surrenders its authority to conduct affairs in this State;
  - (2) That it revokes the authority of its registered agent in this State to accept service of process and consents that service of process in any suit, action, or proceeding based upon any cause of action arising in this State during the time the corporation was licensed to conduct affairs in this State may thereafter be made on such corporation by service thereof on the Secretary of State;
  - (3) A post office address to which may be mailed a copy of any process against the corporation that may be served on the Secretary of State;
  - (4) The name of the corporation and the state or country under the laws of which it is organized; and
  - (5) Such additional information as may be necessary or appropriate in order to enable the Secretary of State to determine and assess any unpaid fees payable by such foreign corporation as in this Act prescribed; or
- (b) If it has been dissolved, file a copy of the articles of dissolution duly authenticated by the proper officer of the state or country under the laws of which such corporation was organized.
- (c) The application for withdrawal and the final report shall be made on forms prescribed and furnished by the Secretary of State.
- (d) When the corporation has complied with subsection (a) of this Section, the Secretary of State shall file the application for withdrawal and mail a copy of the application to the corporation or its representative. If the provisions of subsection (b) of this Section have been followed, the Secretary of State shall file a copy of the articles of dissolution in his or her office.

Upon the filing of the application for withdrawal or copy of the articles of dissolution, the authority of the corporation to conduct affairs in this State shall cease.

*(Source: P.A. 92-33, eff. 7-1-01.)*

### **Sec. 113.50. Grounds for revocation of authority.**

- (a) The authority of a foreign corporation to conduct affairs in this State may be revoked by the Secretary of State:

- (1) Upon the failure of an officer or director to whom interrogatories have been propounded by the Secretary of State, as provided in this Act, to answer the same fully and to file such answer in the office of the Secretary of State;
- (2) If the authority of the corporation was procured through fraud practiced upon the State;
- (3) If the corporation has continued to exceed or abuse the authority conferred upon it by this Act;
- (4) Upon the failure of the corporation to keep on file in the office of the Secretary of State duly authenticated copies of each amendment to its articles or incorporation;
- (5) Upon the failure of the corporation to appoint and maintain a registered agent in this State;
- (6) Upon the failure of the corporation to file any report after the period prescribed by this Act for the filing of such report;
- (7) Upon the failure of the corporation to pay any fees or charges prescribed by this Act;
- (8) For misrepresentation of any material matter in any application, report, affidavit, or other document filed by such corporation pursuant to this Act;
- (9) Upon the failure of the corporation to renew its assumed name or to apply to change its assumed name pursuant to the provisions of this Act, when the corporation can only conduct affairs within this State under its assumed name in accordance with the provisions of Section 104.05 of this Act;
- (10) Upon notification from the local liquor commissioner, pursuant to Section 4-4(3) of "The Liquor Control Act of 1934," as now or hereafter amended, that a foreign corporation functioning as a club in this State has violated that Act by selling or offering for sale at retail alcoholic liquors without a retailer's license; or
- (11) When, in an action by the Attorney General, under the provisions of the "Consumer Fraud and Deceptive Business Practices Act", or "An Act to regulate solicitation and collection of funds for charitable purposes, providing for violations thereof, and making an appropriation therefor", approved July 26, 1963, as amended, or the "Charitable Trust Act", a court has found that the corporation substantially and willfully violated any of such Acts.

(b) The enumeration of grounds for revocation in paragraphs (1) through (11) of subsection (a) shall not preclude any action by the Attorney General which is authorized by any other statute of the State of Illinois or the common law.

*(Source: P.A. 92-33, eff. 7-1-01; 93-59, eff. 7-1-03.)*

### **Sec. 113.55. Procedure for revocation of authority.**

(a) After the Secretary of State determines that one or more grounds exist under Section 113.50 of this Act for the revocation of authority of a foreign corporation, he or she shall send by regular mail to each delinquent corporation a Notice of Delinquency to its registered office, or, if the corporation has failed to maintain a registered office, then to the president or other principal officer at the last known office of said officer.

(b) If the corporation does not correct the default within 90 days following such notice, the Secretary of State shall thereupon revoke the authority of the corporation by issuing a certificate of revocation

that recites the grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate in his or her office and mail one copy to the corporation at its registered office or, if the corporation has failed to maintain a registered office, then to the president or other principal officer at the last known office of said officer.

(c) Upon the issuance of the certificate of revocation, the authority of the corporation to conduct affairs in this State shall cease and such revoked corporation shall not thereafter conduct any affairs in this State.

*(Source: P.A. 96-66, eff. 1-1-10; 96-1121, eff. 1-1-11.)*

### **Sec. 113.60. Reinstatement following revocation.**

(a) A foreign corporation revoked under Section 113.55 of this Act may be reinstated by the Secretary of State following the date of issuance of the certificate of revocation upon:

- (1) The filing of an application for reinstatement;
- (2) The filing with the Secretary of State by the corporation of all reports then due and theretofore becoming due; and
- (3) The payment to the Secretary of State by the corporation of all fees and penalties then due and theretofore becoming due.

(b) The application for reinstatement shall be executed and filed in duplicate in accordance with Section 101.10 of this Act and shall set forth:

- (1) The name of the corporation at the time of the issuance of the certificate of revocation;
- (2) If such name is not available for use as determined by the Secretary of State at the time of filing the application for reinstatement, the name of the corporation as changed, or the assumed corporate name which the corporation elects to adopt for use in this State in accordance with Section 104.05; provided, however, that any change of name is properly effected pursuant to Sections 113.30 and Section 113.40 of this Act, and any adoption of assumed corporate name is properly effected pursuant to Section 104.15 of this Act;
- (3) The date of the issuance of the certificate of revocation; and
- (4) The address, including street and number, or rural route number, of the registered office of the corporation upon reinstatement thereof, and the name of its registered agent at such address upon the reinstatement of the corporation; provided, however, that any change from either the registered office or the registered agent at the time of revocation is properly reported pursuant to Section 105.10 of this Act.

(c) When a revoked corporation has complied with the provisions of this Section, the Secretary of State shall file the application for reinstatement.

(d) Upon the filing of the application for reinstatement, the authority of the corporation to conduct affairs in this State shall be deemed to have continued without interruption from the date of the issuance of the certificate of revocation, and the corporation shall stand revived as if its authority had not been revoked; and all acts and proceedings of its officers, directors and members, acting or



purporting to act as such, which would have been legal and valid but for such revocation, shall stand ratified and confirmed.

*(Source: P.A. 94-605, eff. 1-1-06.)*

**Sec. 113.65. Application to corporations heretofore qualified to conduct affairs in this state.**

Foreign corporations which have been duly authorized to conduct affairs in this State at the time this Act takes effect, for a purpose or purposes for which a corporation might secure such authority under this Act, shall, subject to the limitations set forth in their respective applications for authority, be entitled to all the rights and privileges applicable to foreign corporations procuring authority to conduct affairs in this State under this Act, and from the time this Act takes effect such corporation shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring under this Act authority to conduct affairs in this State.

*(Source: P.A. 92-33, eff. 7-1-01.)*

**Sec. 113.70. Conducting affairs without authority.**

No foreign corporation conducting affairs in this state without authority to do so is permitted to maintain a civil action in any court of this State, until such corporation obtains such authority. Nor shall a civil action be maintained in any court of this State by any successor or assignee of such corporation on any right, claim or demand arising out of conducting affairs by such corporation in this State, until authority to conduct affairs in this State is obtained by such corporation or by a corporation which has acquired all or substantially all of its assets. The failure of a foreign corporation to obtain authority to conduct affairs in this State does not impair the validity of any contract or act of such corporation, and does not prevent such corporation from defending any action in any court of this State.

*(Source: P.A. 96-66, eff. 1-1-10.)*

**ARTICLE 14. REPORTS**

**Sec. 114.05. Annual report of domestic or foreign corporation.**

Each domestic corporation organized under this Act, and each foreign corporation authorized to conduct affairs in this State, shall file, within the time prescribed by this Act, an annual report setting forth:

- (a) The name of the corporation.
- (b) The address, including street and number, or rural route number, of its registered office in this State, and the name of its registered agent at such address.
- (c) The address, including street and number, if any, of its principal office.
- (d) The names and respective addresses, including street and number, or rural route number, of its directors and officers.
- (e) A brief statement of the character of the affairs which the corporation is actually conducting from among the purposes authorized in Section 103.05 of this Act.
- (f) Whether the corporation is a Condominium Association as established under the Condominium Property Act, a Cooperative Housing Corporation defined in Section 216 of the Internal Revenue

Code of 1954 or a Homeowner Association which administers a common-interest community as defined in subsection (c) of Section 9-102 of the Code of Civil Procedure.

(g) Such additional information as may be necessary or appropriate in order to enable the Secretary of State to administer this Act and to verify the proper amount of fees payable by the corporation.

Such annual report shall be made on forms prescribed and furnished by the Secretary of State, and the information therein required by subsections (a) to (d), both inclusive, of this Section, shall be given as of the date of the execution of the annual report. It shall be executed by the corporation by any authorized officer and verified by him or her, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation and verified by such receiver or trustee.

*(Source: P.A. 93-59, eff. 7-1-03; 94-605, eff. 1-1-06.)*

#### **Sec. 114.10. Filing of annual report of domestic or foreign corporation.**

Such annual report together with all fees and charges as prescribed by this Act, shall be delivered to the Secretary of State within 60 days immediately preceding the first day of the anniversary month of the corporation each year. Proof to the satisfaction of the Secretary of State that prior to the first day of the anniversary month of the corporation such report together with all fees and charges as prescribed by this Act, was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the Secretary of State finds that such report conforms to the requirements of this Act, he or she shall file the same. If he or she finds that it does not so conform, he or she shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this Act and returned to the Secretary of State within 30 days of the date the report was returned for corrections.

*(Source: P.A. 84-1423.)*

### **ARTICLE 15. FEES AND CHARGES**

#### **Sec. 115.05. Fees and charges to be collected by Secretary of State.**

The Secretary of State shall charge and collect in accordance with the provisions of this Act:

- (a) Fees for filing documents.
- (b) Miscellaneous charges.
- (c) Fees for filing annual reports.

*(Source: P.A. 92-33, eff. 7-1-01.)*

#### **Sec. 115.10. Fees for filing documents.**

The Secretary of State shall charge and collect for:

- (a) Filing articles of incorporation, \$50.
- (b) Filing articles of amendment, \$25, unless the amendment is a restatement of the articles of incorporation, in which case the fee shall be \$100.

- (c) Filing articles of merger or consolidation, \$25.
- (d) Filing articles of dissolution, \$5.
- (e) Filing application to reserve a corporate name, \$25.
- (f) Filing a notice of transfer or cancellation of a reserved corporate name, \$25.
- (g) Filing statement of change of address of registered office or change of registered agent, or both, \$5.
- (h) Filing an application of a foreign corporation for authority to conduct affairs in this State, \$50.
- (i) Filing an application of a foreign corporation for amended authority to conduct affairs in this State, \$25.
- (j) Filing a copy of amendment to the articles of incorporation of a foreign corporation holding authority to conduct affairs in this State, \$25, unless the amendment is a restatement of the articles of incorporation, in which case the fee shall be \$100.
- (k) Filing a copy of articles of merger of a foreign corporation holding authority to conduct affairs in this State, \$25.
- (l) Filing an application for withdrawal and final report or a copy of articles of dissolution of a foreign corporation, \$5.
- (m) Filing an annual report of a domestic or foreign corporation, \$10, of which \$5 must be deposited into the Charitable Trust Stabilization Fund.
- (n) Filing an application for reinstatement of a domestic or a foreign corporation, \$25.
- (o) Filing an application for use of an assumed corporate name, \$150 for each year or part thereof ending in 0 or 5, \$120 for each year or part thereof ending in 1 or 6, \$90 for each year or part thereof ending in 2 or 7, \$60 for each year or part thereof ending in 3 or 8, \$30 for each year or part thereof ending in 4 or 9, and a renewal fee for each assumed corporate name, \$150.
- (p) Filing an application for change or cancellation of an assumed corporate name, \$5.
- (q) Filing an application to register the corporate name of a foreign corporation, \$50; and an annual renewal fee for the registered name, \$50.
- (r) Filing an application for cancellation of a registered name of a foreign corporation, \$5.
- (s) Filing a statement of correction, \$25.
- (t) Filing an election to accept this Act, \$25.
- (u) Filing any other statement or report, \$5.

*(Source: P.A. 94-605, eff. 1-1-06; 95-655, eff. 6-1-08.)*

**Sec. 115.15. Miscellaneous charges.**

The Secretary of State shall charge and collect:

- (a) For furnishing a copy or certified copy of any document, instrument, or paper relating to a corporation, or for a certificate, \$5.
- (b) At the time of any service of process, notice or demand on him or her as resident agent of a corporation, \$10, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

*(Source: P.A. 97-839, eff. 7-20-12.)*

**Sec. 115.20. Expedited service fees.**

- (a) The Secretary of State may charge and collect a fee for expedited services as follows:

Certificates of good standing or fact, \$10;

All filings, copies of documents, annual reports filed on or after January 1, 1984, and copies of documents of dissolved corporations having a file number over 5199, \$25.

- (b) Expedited services shall not be available for a statement of correction or any request for copies involving annual reports filed before January 1, 1984 or involving dissolved corporations with a file number below 5200.

- (c) All moneys collected under this Section shall be deposited into the Department of Business Services Special Operations Fund. No other fees or taxes collected under this Act shall be deposited into that Fund.

- (d) As used in this Section, "expedited services" has the meaning ascribed thereto in Section 15.95 of the Business Corporation Act of 1983.

*(Source: P.A. 92-33, eff. 7-1-01; 93-59, eff. 7-1-03.)*

**Sec. 115.85. Effect of nonpayment of fees or taxes.**

- (a) The Secretary of State shall not file any articles, statements, certificates, reports, applications, notices, or other papers relating to any corporation, domestic or foreign, organized under or subject to the provisions of this Act until all fees and charges provided to be paid in connection therewith shall have been paid to him or her, or while the corporation is in default in the payment of any fees, charges or penalties herein provided to be paid by or assessed against it, or when the Illinois Department of Revenue has given notice that the corporation is in default in the filing of a return or the payment of any final assessment of tax, penalty or interest as required by any tax Act administered by the Department.

- (b) The Secretary of State shall not file, with respect to any domestic or foreign corporation, any document required or permitted to be filed by this Act, which has an effective date other than the date of filing until there has been paid by such corporation to the Secretary of State all fees and charges due and payable on or before said effective date.

(c) No corporation required to pay a penalty under this Act shall maintain any civil action until all such penalties have been paid in full.

*(Source: P.A. 86-381.)*

## **ARTICLE 16. PENALTIES**

### **Sec. 116.05. Penalties imposed upon corporations.**

(a) Each corporation, domestic or foreign, that fails or refuses to file its annual report prior to the first day of its anniversary month shall pay a penalty of \$3.

(b) Any corporation, domestic or foreign, failing to pay the prescribed fee for assumed corporate name renewal when due and payable shall be given notice of such nonpayment by the Secretary of State by regular mail; and if such fee together with a penalty fee of \$5 is not paid within 90 days after such notice is mailed, the right to use such assumed name shall cease.

(c) Any corporation which (i) puts forth any sign or advertisement, assuming any name other than that by which it is incorporated or otherwise authorized by law to act or (ii) violates Section 103.25, shall be guilty of a Class C misdemeanor and shall be deemed guilty of an additional offense for each day it shall continue to so offend.

(d) Each corporation, domestic or foreign, that fails or refuses (1) to answer truthfully and fully within the time prescribed by this Act interrogatories propounded by the Secretary of State in accordance with this Act, or (2) to perform any other act required by this Act to be performed by the corporation, is guilty of a Class C misdemeanor.

(e) Each corporation that fails or refuses to file articles of revocation of dissolution within the time period prescribed by this Act is subject to a penalty for each calendar month or part of the month that it is delinquent in the amount of \$25.00.

*(Source: P.A. 91-906, eff. 1-1-01.)*

### **Sec. 116.10. Penalties imposed upon officers and directors.**

Each officer and director of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this Act to answer truthfully and fully interrogatories propounded to him or her by the Secretary of State in accordance with the provisions of this Act, or who signs any report or statement filed with the Secretary of State which is known to such officer or director to be false in any material statement or representation, or who votes for or consents to or otherwise knowingly participates in the making of a loan prohibited by Section 108.80 of this Act, commits a Class C misdemeanor.

*(Source: P.A. 84-1423.)*

## **ARTICLE 17. REPEALER**

### **Sec. 117.05. Specific repealer.**

The "General Not for Profit Corporation Act", approved July 17, 1943, as amended, is repealed.

*(Source: P.A. 84-1423.)*