

## DIVISION 2. NOT-FOR-PROFIT CORPORATION LAW

### Source and Comparable Provisions

#### HOW TO USE THIS MATERIAL

This material has been prepared to provide background information concerning source and comparable provisions for the staff draft of the Nonprofit Corporations Code (Division 2--General Nonprofit Corporation Law). The information is provided for the staff draft as originally prepared. It has not been revised to reflect decisions made at the Commission's May meeting.

The text of the existing source provision is indicated by the heavy black lines shown in the margin of the pages. Where the staff draft is taken almost verbatim from the source provision, the changes made in the source provision are shown by strikeout and underscore. Where the source provision has been substantially rewritten in the staff draft, the changes in the source provision are not shown; but ordinarily such changes are noted in the Comment to the particular section of the staff draft.

DIVISION 2. NOT-FOR-PROFIT CORPORATION LAW

(Source and Comparable Provisions)

CHAPTER 1. SHORT TITLE; DEFINITIONS; APPLICATION

§ 101. Short title

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 101

COMPARABLE PROVISIONS:

Ill. General Not for Profit Corporation Act § 1

Pa. Corporation Not-for-profit Code § 7101

ABA-ALI Model Non-Profit Corporation Act § 1

Corp. Code § 9000 (General Nonprofit Corporation Law)

§ 105. Application of definitions

SOURCE:

Evid. Code § 100

§ 110. "Articles"

SOURCE:

Corp. Code § 102 (business and nonprofit corporations) (terminology altered)\*

§ 102. Articles. "Articles" includes the articles of incorporation, amendments thereto, amended articles, certificates of incorporation, ~~certificates of determination of preferences, and agreements~~ of consolidation or merger. plans

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 102(a)(3)

ABA-ALI Model Non-Profit Corporation Act § 2(d)

§ 115. "Board"; "board of directors"

SOURCE:

Derived from ABA-ALI Model Non-Profit Corporation Act § 2(g)\*

(g) "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.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 102(a)(6)

Corp. Code § 111 (business and nonprofit corporations)

§ 120. "Bylaws"

SOURCE:

N.Y. Not-for-Profit Corporation Law § 102(a)(2); ABA-ALI Model Non-Profit Corporation Act § 2(e)(same)

COMPARABLE PROVISIONS:

No comparable provision in Corporations Code

§ 125. "Charitable purposes"

SOURCE:

New (adopted from Lynch v. Spilman, 67 Cal.2d 251, 261, 431 P.2d 636, 642, 62 Cal. Rptr. 12, 18 (1967))

COMPARABLE PROVISIONS:

Pa. Corporation Not-for-profit Code § 7103 ("charitable purposes")\*

§ 7103. Definitions

Subject to additional definitions contained in subsequent provisions of this part which are applicable to specific articles, chapters or other provisions of this part, the following words and phrases, when used in this part shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Articles." The original articles of incorporation, all amendments thereto, articles of merger and consolidation, and any other articles, statements or certificates permitted or required to be filed by this part or by Chapter 1 of this title<sup>1</sup> (relating to general provisions), and including what have heretofore been designated by law as certificates of incorporation or charters. If an amendment or articles of merger, division or conversion made in the manner permitted by this part restates articles in their entirety or if there are articles of consolidation, thenceforth the "articles" shall not include any prior documents and any certificate issued by the Department of State with respect thereto shall so state.

"Board of directors" or "board." The group of persons vested with the management of the business and affairs of the corporation irrespective of the name by which such group is designated. The term does not include an other body. The term, when used in any provision of this part relating to the organization or procedures of or the manner of taking action by the board of directors, shall be construed to include and refer to any executive or other committee of the board. Any provision of this part relating or referring to action to be taken by the board of directors or the procedure required therefor shall be satisfied by the taking of corresponding action by a committee of the board of directors to the extent authority to take such action has been delegated to such committee pursuant to section 7731 of this title (relating to executive and other committees of the board).

"Business." In the case of a domestic corporation not-for-profit, any or all of the activities for which it has been incorporated, and,

in the case of a foreign corporation not-for-profit, any or all of the activities in which its certificate of authority authorizes it to engage within this Commonwealth.

**"Bylaws."** The code or codes of rules adopted for the regulation or management of the business and affairs of the corporation irrespective of the name or names by which such rules are designated.

**"Charitable purposes."** The relief of poverty, the advancement of education, the advancement of religion, the promotion of health, governmental or municipal purposes, and other purposes the accomplishment of which is beneficial to the community.

**"Common trust fund."** A fund maintained by the corporation for the collective investment and reinvestment of trust assets, and any other funds contributed thereto by such corporation, as fiduciary or otherwise.

**"Directors."** Persons designated, elected or appointed, by that or any other name or title, to act as directors, and their successors. The term does not include a member of an other body, as such. The term, when used in relation to any power or duty requiring collective action, shall be construed to mean "board of directors."

**"Entitled to vote."** Those persons entitled to vote on the matter under either the bylaws of the corporation or any applicable controlling provision of law.

**"Full age."** Of the age of 18 years or over.

**"Incorporator."** A signer of the original articles of incorporation.

**"Member."** One having membership rights in a corporation in accordance with the provisions of its bylaws. The term, when used in relation to the taking of corporate action includes:

(1) the proxy of a member, if action by proxy is permitted under the bylaws of the corporation; and

(2) a delegate to any convention or assembly of delegates of members established pursuant to any provision of this part.

If and to the extent the bylaws confer rights of members upon holders of securities evidencing indebtedness or governmental or other entities pursuant to any provision of this part the term shall be construed to include such security holders and governmental or other entities. The term shall be construed to include "shareholder" if the corporation issues shares of stock.

**"Nonprofit corporation" or "domestic nonprofit corporation."** A domestic corporation not-for-profit incorporated under Article B of this part (relating to domestic nonprofit corporations) or heretofore or hereafter incorporated or domesticated in this Commonwealth, which is not excluded from the scope of Article B of this part by section 7302 of this title (relating to application of article).

**"Nonqualified foreign corporation."** A foreign corporation not-for-profit which is not a qualified foreign corporation, as defined in this section.

**"Other body."** A term employed in this part to denote a person or group, other than the board of directors or a committee thereof, who pursuant to authority expressly conferred by this part may be vested by the bylaws of the corporation with powers which, if not vested by the bylaws in such person or group, would by this part be required to be exercised by either:

- (1) the membership of a corporation taken as a whole;
- (2) a convention or assembly of delegates of members established pursuant to any provision of this part; or
- (3) the board of directors.

Except as otherwise provided in this part a corporation may establish distinct persons or groups to exercise different powers which this part authorizes a corporation to vest in an other body.

**"Qualified foreign corporation."** A foreign corporation not-for-profit authorized under Article C of this part<sup>2</sup> (relating to foreign corporations not-for-profit) to do business in this Commonwealth.

**"Registered office."** That office maintained by a corporation in this Commonwealth, the address of which is filed in the Department of State or which was recorded in the office of the recorder of deeds in the manner formerly required by statute.

**"Representative."** When used with respect to a corporation, partnership, joint venture, trust or other enterprise, means a director, officer, employee or agent thereof.

**"Trust instrument."** Any lawful deed of gift, grant, will or other document by which the donor, grantor or testator shall give, grant or devise any real or personal property or the income therefrom in trust for any charitable purpose.

**"Unless otherwise provided."** When used to introduce a rule implies that the alternative provisions contemplated may either relax or restrict the stated rule.

**"Unless otherwise restricted."** When used to introduce a rule implies that the alternative provisions contemplated may further restrict, but may not relax, the stated rule.

§ 130. "Corporation" or "domestic corporation"

**SOURCE:**

Derived from ABA-ALI Model Non-Profit Corporation Act § 2(a)\*

(a) "Corporation" or "domestic corporation" means a non-profit corporation subject to the provisions of this Act, except a foreign corporation.

**COMPARABLE PROVISIONS:**

Corp. Code § 106 (business and nonprofit corporations)

§ 135. "Director"

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 102(a)(6)\*

(6) "Director" means any member of the governing board of a corporation, whether designated as director, trustee, manager, governor, or by any other title. The term "board" means "board of directors".

COMPARABLE PROVISIONS:

Corp. Code § 110 (business and nonprofit corporations); Pa. Corporation Not-for-profit Code § 7103 ("directors")

§ 140. "Foreign corporation"

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 102(a)(7)\*

(7) "Foreign corporation" means a corporation formed under laws other than the statutes of this state, which, if formed under the statutes of this state, would be within the term "corporation or domestic corporation" as herein defined. "Authorized", when used with respect to a foreign corporation, means having authority under Article 18 (Foreign Corporations)<sup>2</sup> to conduct activities of the corporation in this state.

COMPARABLE PROVISIONS:

Corp. Code § 106 (business and nonprofit corporations)

§ 142. "Incorporator"

SOURCE:

Corp. Code § 105 (business and nonprofit corporations)(same)

COMPARABLE PROVISIONS:

Pa. Corporation Not-for-profit Code § 7103 ("incorporator")

§ 143. "Insolvent"

SOURCE:

ABA-ALI Model Non-Profit Corporation Act § 2(h)(same)

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 102(a)(8)

§ 145. "Member"; "membership"

SOURCE:

Derived from ABA-ALI Model Non-Profit Corporation Act § 2(f)\*

(f) "Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or by-laws.

COMPARABLE PROVISIONS:

Corp. Code § 104 (business and nonprofit corporations)\*

§ 104. Member. "Member" includes each person signing the articles of a nonstock corporation and each person admitted to membership therein.

§ 150. "Membership corporation"

SOURCE:

New

§ 155. "Not-for-profit corporation" or "nonprofit corporation"

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 102(a)(5)\*

(5) "Corporation" or "domestic corporation" means a corporation (1) formed under this chapter, or existing on its effective date and theretofore formed under any other general statute or by any special act of this state, exclusively for a purpose or purposes, not for pecuniary profit or financial gain, for which a corporation may be formed under this chapter, and (2) no part of the assets, income or profit of which is distributable to, or enures to the benefit of, its members, directors or officers except to the extent permitted under this statute.

COMPARABLE PROVISIONS:

Corp. Code § 107 (business and nonprofit corporations)\*; Pa. Corporation Not-for-profit Code § 7103 ("nonprofit corporation")

§ 107. Stock corporation; nonstock corporation. "Stock corporation" means a corporation authorized to issue shares of stock.

"Nonstock corporation" includes every corporation other than a "stock corporation."

§ 160. "Voting power"

SOURCE:

New

§ 165. Scope of division

SOURCE:

Derived from Corp. Code § 9001 (nonprofit corporation)\*

**§ 9001. Scope.** The provisions of this part apply to every non-profit corporation now existing or hereafter formed, unless the corporation is expressly exempted from the operation thereof, or there is a special provision applicable to the corporation inconsistent with the provisions of this part, in which case the special provision prevails.

COMPARABLE PROVISIONS:

Corp. Code § 119 (business corporation); N.Y. Not-for-Profit Corporation Law § 103\*; Pa. Corporation Not-for-profit Code § 7102; ABA-ALI Model Non-Profit Corporation Act § 3

§ 103. Application

(a) Except as otherwise provided in this section, this chapter applies to every domestic corporation as herein defined, and to every foreign corporation as herein defined which is authorized to conduct or which conducts any activities in this state. This chapter also applies to any other domestic corporation or foreign corporation of any type or kind to the extent, if any, provided under this chapter or any law governing such corporation and, if no such provision for application is made, to the extent, if any, that the membership corporations law applied to such corporation as of the effective date of this chapter. A corporation formed by a special act of this state which has as its principal purpose an education purpose and which is a member of the university of the state of New York, is an "education corporation" under section two hundred sixteen-a of the education law.

To the extent that the membership corporations law or the general corporation law applied to it as of the effective date of this chapter, the corresponding provisions of this chapter apply to a corporation heretofore formed by or pursuant to a special act of this state other than a religious corporation or an "education corporation" under clause (b) of subdivision one of section two hundred sixteen-a of the education law, if (1) its principal purpose is a religious, charitable or education purpose, and (2) it is operated, supervised or controlled by or in connection with a religious organization. Any such corporation may elect hereunder at any time after the effective date of this chapter to file a certificate of type under section one hundred thirteen (Certificate of type of not-for-profit corporation). Upon the filing of such certificate by the department of state, this chapter shall apply in all respects to such corporation.

This chapter also applies to any other corporation of any type or kind, formed not for profit under any other chapter of the laws of this state except a chapter of the consolidated laws, to the extent that provisions of this chapter do not conflict with the provisions of such unconsolidated law. If an applicable provision of such unconsolidated law relates to a matter embraced in this chapter but is not in conflict therewith, both provisions shall apply. Any corporation to which this chapter is made applicable by this paragraph shall be treated as a "corporation" or "domestic corporation" as such terms are used in this chapter, except that the purposes of any such corporation formed or formable under such unconsolidated law shall not thereby be extended. For the purpose of this paragraph, the effective date of this chapter as to corporations to which this chapter is made applicable by this paragraph shall be September one, nineteen hundred seventy-three.

(b) The general corporation law does not apply to a corporation of any type or kind to which this chapter applies. A reference in any statute of this state which makes a provision of the general corporation law applicable to a corporation of any type



or kind to which this chapter is applicable or a reference in any statute of this state, other than the membership corporations law,<sup>3</sup> which makes a provision of the membership corporations law applicable to a corporation of any type or kind shall be deemed and construed to refer to and make applicable the corresponding provision, if any, of this chapter.

(c) If any provision in articles one to thirteen inclusive of this chapter conflicts with a provision of any subsequent articles or of any special act under which a corporation to which this chapter applies is formed, the provision in such subsequent article or special act prevails. A provision of any such subsequent article or special act relating to a matter referred to in articles one to thirteen inclusive and not in conflict therewith is supplemental and both shall apply. Whenever the board of a Type B corporation, formed under a special act reasonably makes an interpretation as to whether a provision of the special act or this chapter prevails, or both apply, such interpretation shall govern unless and until a court determines otherwise, if such board has acted in good faith for a purpose which it reasonably believes to be in the best interests of the corporation, provided however, that such interpretation shall not bind any governmental body or officer.

(d) This chapter applies to commerce with foreign nations and among the several states, and to corporations formed by or under any act of congress, only to the extent permitted under the constitution and laws of the United States.

(e) The enactment of this chapter shall not affect the duration of a corporation which is existing on the effective date of this chapter.<sup>4</sup> Any such existing corporation, its members, directors and officers shall have the same rights and be subject to the same limitations, restrictions, liabilities and penalties as a corporation formed under this chapter, its members, directors and officers.

(f) This chapter shall not affect any cause of action, liability, penalty or action or special proceeding, which on the effective date of this chapter,<sup>4</sup> is accrued, existing, incurred or pending but the same may be asserted, enforced, prosecuted or defended as if this chapter had not been enacted.

## § 170. Existing corporations

### SOURCE:

Subdivision (a) is derived from N.Y. Not-for-Profit Corporation Law § 103(e)\*; subdivisions (b) and (c) are new.

(e) The enactment of this chapter shall not affect the duration of a corporation which is existing on the effective date of this chapter.<sup>4</sup> Any such existing corporation, its members, directors and officers shall have the same rights and be subject to the same limitations, restrictions, liabilities and penalties as a corporation formed under this chapter, its members, directors and officers.

### COMPARABLE PROVISIONS:

Corp. Code § 119; ABA-ALI Model Non-Profit Corporation Act § 3(b)

§ 175. Existing claims and actions

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 103(f)\*

(f) This chapter shall not affect any cause of action, liability, penalty or action or special proceeding, which on the effective date of this chapter, is accrued, existing, incurred or pending but the same may be asserted, enforced, prosecuted or defended as if this chapter had not been enacted.

COMPARABLE PROVISIONS:

Corp. Code §§ 125, 126

§ 180. Reference to former General Nonprofit Corporation Law

SOURCE:

New

CHAPTER 2. FORMATION AND BYLAWS

Article 1. Incorporators

§ 201. Incorporators

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 401\*; ABA-ALI Model Non-Profit Corporation Act § 28

§ 401. Incorporators

One or more natural persons at least nineteen years of age may act as incorporators of a corporation to be formed under this chapter.

COMPARABLE PROVISIONS:

Corp. Code §§ 9200 (nonprofit corporation)\*; 300 (business corporation)

§ 9200. Lawful purpose without distribution of gains, profits, or dividends; incidental business for profit. A nonprofit corporation may be formed by three or more persons for any lawful purposes which do not contemplate the distribution of gains, profits, or dividends to the members thereof and for which individuals lawfully may associate themselves, such as religious, charitable, social, educational, or cemetery purposes, or for rendering services, subject to laws and regulations applicable to particular classes of nonprofit corporations or lines of activity. Carrying on business at a profit as an incident to the main purposes of the corporation and the distribution of assets to members on dissolution are not forbidden to nonprofit corporations, but no corporation formed or existing under this part shall distribute any gains, profits, or dividends to any of its members as such except upon dissolution or winding up.

## Article 2. Powers and Purposes

### § 301. Purposes

#### SOURCE:

Derived from Corp. Code § 9200 (nonprofit corporation)\*

**§ 9200.** Lawful purpose without distribution of gains, profits, or dividends; incidental business for profit. A nonprofit corporation may be formed by three or more persons for any lawful purposes which do not contemplate the distribution of gains, profits, or dividends to the members thereof and for which individuals lawfully may associate themselves, such as religious, charitable, social, educational, or cemetery purposes, or for rendering services, subject to laws and regulations applicable to particular classes of nonprofit corporations or lines of activity. Carrying on business at a profit as an incident to the main purposes of the corporation and the distribution of assets to members on dissolution are not forbidden to nonprofit corporations, but no corporation formed or existing under this part shall distribute any gains, profits, or dividends to any of its members as such except upon dissolution or winding up.

#### COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 201\*; Pa. Corporation Not-for-profit Code § 7311\*

### § 201. Purposes

(a) A corporation, as defined in subparagraph (5), paragraph (a) of § 102 (Definitions), may be formed under this chapter as provided in paragraph (b) unless it may be formed under any other corporate law of this state in which event it may not be formed under this chapter unless such other corporate law expressly so provides.

(b) A corporation, of a type and for a purpose or purposes as follows, may be formed under this chapter, provided consents required under any other statute of this state have been obtained:

Type A—A not-for-profit corporation of this type may be formed for any lawful non-business purpose or purposes including, but not limited to, any one or more of the following non-pecuniary purposes: civic, patriotic, political, social, fraternal, athletic, agricultural, horticultural, animal husbandry, and for a professional, commercial, industrial, trade or service association.

Type B—A not-for-profit corporation of this type may be formed for any one or more of the following non-business purposes: charitable, educational, religious, scientific, literary, cultural or for the prevention of cruelty to children or animals.

Type C—A not-for-profit corporation of this type may be formed for any lawful business purpose to achieve a lawful public or quasi-public objective.

**Type D**—A not-for-profit corporation of this type may be formed under this chapter when such formation is authorized by any other corporate law of this state for any business or non-business, or pecuniary or non-pecuniary, purpose or purposes specified by such other law, whether such purpose or purposes are also within types A, B, C above or otherwise.

(e) If a corporation is formed for purposes which are within both type A and type B above, it is a type B corporation. If a corporation has among its purposes any purpose which is within type C, such corporation is a type C corporation. A type D corporation is subject to all provisions of this chapter which are applicable to a type B corporation under this chapter unless provided to the contrary in, and subject to the contrary provisions of, the other corporate law authorizing formation under this chapter of the type D corporation.

### **§ 7311. Purposes**

Corporations may be incorporated under this article for any lawful purpose or purposes, including, but not limited to, any one or more of the following or similar purposes: athletic; any lawful business purpose to be conducted on a not-for-profit basis; beneficial; benevolent; cemetery; charitable; civic; control of fire; cultural; educational; encouragement of agriculture or horticulture; fraternal; fraternal benefit; health; literary; missionary; musical; mutual improvement; patriotic; political; prevention of cruelty to persons or animals; professional, commercial, industrial, trade, service or business associations; promotion of the arts; protection of natural resources; religious; research; scientific and social.

### **§ 302. Unincorporated association may incorporate**

**SOURCE:**

Derived from Corp. Code § 9202 (nonprofit corporation)\*

**§ 9202. Incorporation of unincorporated associations; unincorporated associations defined.** A nonprofit corporation may be formed for the purpose of incorporating any existing unincorporated association or organization. As used in this part "unincorporated association" includes but is not limited to society, library, school, college, club, church, trustees of a charitable trust, and chamber of commerce.

§ 303. Powers of the corporation

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 202\*

§ 202. General and special powers

(a) Each corporation, subject to any limitations provided in this chapter or any other statute of this state or its certificate of incorporation, shall have power in furtherance of its corporate purposes:

(1) To have perpetual duration.

(2) To sue and be sued in all courts and to participate in actions and proceedings, whether judicial, administrative, arbitral or otherwise, in like cases as natural persons.

(3) To have a corporate seal, and to alter such seal at pleasure, and to use it by causing it or a facsimile to be affixed or impressed or reproduced in any other manner.

(4) To purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

(5) To sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, or create a security interest in, all or any of its property, or any interest therein, wherever situated.

(6) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of, mortgage, pledge, use and otherwise deal in and with, bonds and other obligations, shares, or other securities or interests issued by others, whether engaged in similar or different business, governmental, or other activities.

(7) To make capital contributions or subventions to other not-for-profit corporations.

(8) To accept subventions from other persons or any unit of government.

(9) To make contracts, give guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property or any interest therein, wherever situated.

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

(11) To conduct the activities of the corporation and have offices and exercise the powers granted by this chapter in any jurisdiction within or without the United States.

(12) To elect or appoint officers, employees and other agents of the corporation, define their duties, fix their reasonable compensation and the reasonable compensation of directors, and to indemnify corporate personnel. Such compensation shall be commensurate with services performed.

(13) To adopt, amend or repeal by-laws, including emergency by-laws made pursuant to subdivision seventeen of section

twelve of the state defense emergency act,<sup>1</sup> relating to the activities of the corporation, the conduct of its affairs, its rights or powers or the rights or powers of its members, directors or officers.

(14) To make donations, irrespective of corporate benefit, for the public welfare or for community fund, hospital, charitable, educational, scientific, civic or similar purposes, and in time of war or other national emergency in aid thereof.

(15) To be a member, associate or manager of other non-profit activities or to the extent permitted in any other jurisdiction to be an incorporator of other corporations, and to be a partner in a redevelopment company formed under the private housing finance law.

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

(b) If any general or special law heretofore passed, or any certificate of incorporation, shall limit the amount of property a corporation may take or hold, or the yearly income from the corporate assets or any part thereof, such corporation may take and hold property of the value of twenty million dollars or less, or the yearly income derived from which shall be two million dollars or less, or may receive yearly income from such corporate assets of two million dollars or less, notwithstanding any such limitations. In computing the value of such property, no increase in value arising otherwise than from improvements made thereon shall be taken into account.

(c) When any corporation shall have sold or conveyed any part of its real property, the supreme court, notwithstanding a restriction in any general or special law, may authorize it to purchase and hold from time to time other real property, upon satisfactory proof that the value of the property so purchased does not exceed the value of the property so sold and conveyed within the three years next preceding the application.

(d) A corporation formed under general or special law to provide parks, playgrounds or cemeteries, or buildings and grounds for camp or grove meetings,<sup>1</sup> Sunday school assemblies, cemetery purposes, temperance, missionary, educational, scientific, musical and other meetings, subject to the ordinances and police regulations of the county, city, town, or village in which such parks, playgrounds, cemeteries, buildings and grounds are situated, may appoint from time to time one or more special policemen, with power to remove the same at pleasure. Such special policemen shall have the same powers as peace officers defined in subdivision thirty-three of section 1.20 of the criminal procedure law to preserve order in and about such parks, playgrounds, cemeteries, buildings and grounds, and the approaches thereto, and to protect the same from injury, and to arrest and prosecute any person making a loud or unusual noise, or committing any breach of the peace, or committing any misdemeanor, or wilfully violating the established rules and regulations of the corporation. Every policeman so appointed shall within fifteen days after his appointment and before entering upon the duties of his office, take and subscribe the oath of office prescribed in the thirteenth article of the constitution of the state of New York, which oath shall be filed in the office of the county clerk of the county where such grounds are situated. A policeman appointed under this section when on duty shall wear conspicuously a metallic shield with the word "policeman" and the name of the corporation which appointed him inscribed thereon. The compensation of policemen appointed under this section shall be paid by the corporation by which they are appointed.

(e) Any wilful trespass in or upon any of the parks, playgrounds, buildings or grounds provided for the purposes mentioned in the preceding paragraph, or upon the approaches thereto, and any wilful injury to any of the said parks, playgrounds, buildings or grounds, or to any trees, shrubbery, fences, fixtures or other property thereon or pertaining thereto, and any wilful disturbance of the peace thereon by intentional breach of the rules and regulations of the corporation, is a misdemeanor.

**COMPARABLE PROVISIONS:**

Corp. Code §§ 9501 (nonprofit corporation)\*; 801, 802 (business corporation); ABA-ALI Model Non-Profit Corporation Act § 5

**§ 9501.** Powers of corporation. Every nonprofit corporation may:

- (a) Sue and be sued.
- (b) Make contracts.
- (c) Receive property by devise or bequest, subject to the laws regulating the transfer of property by will, and otherwise acquire and hold all property, real or personal, including shares of stock, bonds, and securities of other corporations.
- (d) Act as trustee under any trust incidental to the principal objects of the corporation, and receive, hold, administer, and expend funds and property subject to such trust.
- (e) Convey, exchange, lease, mortgage, encumber, transfer upon trust, or otherwise dispose of all property, real or personal.
- (f) Borrow money, contract debts, and issue bonds, notes, and debentures, and secure the payment or performance of its obligations.
- (g) Do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the corporation.

**§ 304.** Effect of articles on authority of officers and directors; ultra vires acts

**SOURCE:**

Derived from Corp. Code § 803 (business and nonprofit corporations)\*

**§ 803.** Effect of articles on authority of officers and directors; ultra vires acts

(a) As between corporation and its officers, directors, and shareholders; proceedings in which ultra vires may be asserted. The statement in the articles of the objects, purposes, powers, and authorized business of the corporation constitutes, as between the corporation and its directors, officers, or shareholders, an authorization to the directors and a limitation upon the actual authority of the representatives of the corporation. Such limitations may be asserted in a proceeding by a shareholder or the State, to enjoin the doing or continuation of unauthorized business by the corporation or its officers, or both, in cases where third parties have not acquired rights thereby, or to dissolve the corporation, or in a proceeding by the corporation or by the shareholders suing in a representative suit, against the officers or directors of the corporation for violation of their authority.

(b) **As between corporation or shareholder and third persons.** No limitation upon the business, purposes, or powers of the corporation or upon the powers of the shareholders, officers, or directors, or the manner of exercise of such powers, contained in or implied by the articles or by Part 9 of this division shall be asserted as between the corporation or any shareholder and any third person.

(c) **Validity of contracts and conveyances.** Any contract or conveyance made in the name of a corporation which is authorized or ratified by the directors, or is done within the scope of the authority, actual or apparent, given by the directors, except as their authority is limited by law other than by Part 9 of this division, binds the corporation, and the corporation acquires rights thereunder, whether the contract is executed or wholly or in part executory.

(d) **Foreign corporations.** This section applies to contracts and conveyances made by foreign corporations in this State and to all conveyances by foreign corporations of real property situated in this State.

**COMPARABLE PROVISIONS:**

N.Y. Not-for-Profit Corporation Law § 203\*; Pa. Corporation Not-for-profit Code § 7503; ABA-ALI Model Non-Profit Corporation Act § 6

**§ 203. Defense of ultra vires.**

(a)<sup>1</sup> No act of a corporation and no transfer of real or personal property to or by a corporation, otherwise lawful, shall, if duly approved or authorized by a judge, court or administrative department or agency as required, 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 transfer, but such lack of capacity or power may be asserted:

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

(2) In an action by or in the right of the corporation to procure a judgment in its favor against an incumbent or former officer or director of the corporation for loss or damage due to his unauthorized act.

(3) In an action or special proceeding by the attorney-general to annul or dissolve the corporation or to enjoin it from the carrying on of unauthorized activities.



**Article 3. Corporate Name**

**§ 401. Corporate name**

**SOURCE:**

Derived from Corp. Code § 310 (business and nonprofit corporations)\*

**§ 310. Misleading or deceptive name; reservation of name; injunction**

The Secretary of State shall not file articles which set forth a name which is likely to mislead the public or which is the same as, or resembles so closely as to tend to deceive, any of the following:

- (a) The name of a domestic corporation.
- (b) The name of a foreign corporation which is authorized to transact business in this state.
- (c) A name which is under reservation for another corporation.

Any applicant may, upon payment of the fee prescribed therefor in the Government Code, obtain from the Secretary of State a certificate of reservation of any name not prohibited by this section, and upon the issuance of the certificate the name stated therein shall be reserved for a period of 60 days. The Secretary of State shall not, however, issue certificates reserving the same name for two or more consecutive 60-day periods to the same applicant or for the use or benefit of the same person, partnership, firm or corporation; nor shall consecutive reservations be made by or for the use or benefit of the same person, partnership, firm or corporation of names so similar as to fall within the prohibitions of this section.

The use by a corporation of a name in violation of this section may be enjoined notwithstanding the filing of its articles by the Secretary of State.

**COMPARABLE PROVISIONS:**

N.Y. Not-for-Profit Corporation Law § 301\*; Pa. Corporation Not-for-profit Code § 7313; ABA-ALI Model Non-Profit Corporation Act § 7

**§ 301: Corporate name; general**

(a) Except as otherwise provided in this chapter, the name of a domestic or foreign corporation:

(1) Shall, unless the corporation is formed for charitable or religious purposes, or for purposes for which the approval of the board of social welfare, the commissioner of social services or the public health council is required, or is a bar association, contain the word "corporation", "incorporated" or "limited" or an abbreviation of one of such words; or in the case of a foreign corporation, it shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof.

(2) Shall not be the same as the name of a corporation of any type or kind, as such name appears on the index of names of existing domestic and authorized foreign corporations of any type or kind in the department of state, bureau of corporations, or a name the right to which is reserved, or a name so similar to any such name as to tend to confuse or deceive.

(3) Shall not contain any word or phrase, or any abbreviation or derivative thereof, the use of which is prohibited or restricted by section 404 (Approvals and consents) or any other statute of this state, unless in the latter case the restrictions have been complied with.

(4) Shall not contain any word or phrase, or any abbreviation or derivative thereof, in a context which indicates or implies that the corporation, if domestic, is formed or, if foreign, is authorized for any purpose or is possessed in this state of any power other than a purpose for which, or a power with which, the domestic corporation may be and is formed or the foreign corporation is authorized.

(5) Shall not, other than as provided in section 404 (Approvals and consents), contain any of the following words or phrases, or any abbreviation or derivative thereof:

acceptance	fidelity	mortgage
annuity	finance	savings
assurance	guaranty	state police
bank	indebtedness	state trooper
bond	insurance	surety
casualty	investment	title
doctor	lawyer	trust
endowment	loan	underwriter

except that the word "doctor" or "lawyer", or an abbreviation or derivative thereof, may be contained in the name of a corporation the membership of which is composed exclusively of doctors or lawyers.

(6) Shall not contain any words or phrases, or any abbreviation or derivative thereof in a context which will tend to mislead the public into believing that the corporation is an agency or instrumentality of the United States or the state of New York or a subdivision thereof or is a public corporation.

(7) Shall not contain the word "cooperative" or an abbreviation, contraction or derivative thereof.

(8) Shall not, nor any part thereof, be permitted if (a) its appeal to the public is to prurient, shameful or morbid interest in lewdness, indecency, nudity, sex, excretion, sadism or masochism, and (b) it goes beyond customary limits of candor in describing or representing such matters in public, and (c) it is substantially without redeeming social value.

Nothing contained in this subparagraph shall be construed to permit the use of a corporate name on the ground that such words or other parts of such proposed corporate name do not violate the penal law. The application of this subparagraph shall be prospective only.

## § 402. Reservation of a corporate name

### SOURCE:

Derived from Corp. Code § 310 (business and nonprofit corporations)\*

### § 310. Misleading or deceptive name; reservation of name; injunction

The Secretary of State shall not file articles which set forth a name which is likely to mislead the public or which is the same as, or resembles so closely as to tend to deceive, any of the following:

- (a) The name of a domestic corporation.
- (b) The name of a foreign corporation which is authorized to transact business in this state.
- (c) A name which is under reservation for another corporation.

Any applicant may, upon payment of the fee prescribed therefor in the Government Code, obtain from the Secretary of State a certificate of reservation of any name not prohibited by this section, and upon the issuance of the certificate the name stated therein shall be reserved for a period of 60 days. The Secretary of State shall not, however, issue certificates reserving the same name for two or more consecutive 60-day periods to the same applicant or for the use or benefit of the same person, partnership, firm or corporation; nor shall consecutive reservations be made by or for the use or benefit of the same person, partnership, firm or corporation of names so similar as to fall within the prohibition of this section.

The use by a corporation of a name in violation of this section may be enjoined notwithstanding the filing of its articles by the Secretary of State.

Section  
12199 of

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 303; Pa. Corporation Not-for-profit Code § 7315; ABA-ALI Model Non-Profit Corporation Act § 7A (optional)

Article 4. Articles of Incorporation

§ 501. Required provisions

SOURCE:

Derived from Corp. Code § 9300 (nonprofit corporation)\*

9300. The articles of incorporation shall set forth:

(a) The name of the corporation.

(b) The specific and primary purposes for which it is formed. This requirement shall not be deemed to preclude a statement of general purposes or powers or to restrict the right of the corporation to engage in any other lawful activity.

(c) That the corporation is organized pursuant to the General Nonprofit Corporation Law or pursuant to Part 1 of Division 2 of Title 1 of the Corporations Code.

(d) The county in this state where the principal office for the transaction of the business of the corporation is located.

(e) The names and addresses of ~~three or more~~ persons who are to act in the capacity of directors until the selection of their successors. These persons ~~may be given such titles as are deemed appropriate, but they shall be~~ subject to all laws of this state relating to directors except as otherwise provided in this part. The number of persons so named constitutes the number of directors of the corporation, until changed by an amendment to the articles or, unless the articles otherwise provide, by a bylaw adopted by the members. However, the articles or, unless the articles provide otherwise, a bylaw duly adopted by the members, may state that the number of directors shall be not less than a stated minimum (which in no case shall be less than five) nor more than a stated maximum (which in no case shall exceed such stated minimum by more than three); and in the event that the articles or bylaws permit such an indefinite number of directors, the exact number of directors shall be fixed, within the limits specified in the articles or bylaws, by a bylaw or amendment thereof duly adopted by the members or by the board of directors. In the event the articles provide for an indefinite number of directors, unless the articles provide otherwise, such indefinite number may be changed, or a definite number fixed without provision for an indefinite number, by a bylaw duly adopted by the members.

(f) If an existing unincorporated association is being incorporated, the name of the existing unincorporated association.

consistent with its stated purposes .

the

are

COMPARABLE PROVISIONS:

Corp. Code § 301 (business corporation)

N.Y. Not-for-Profit Corporation Law § 402\*; Pa. Corporation Not-for-profit Code § 7316; ABA-ALI Model Non-Profit Corporation Act § 29

§ 402. Certificate of incorporation; contents

(a) A certificate entitled "Certificate of Incorporation of . . . . . (name of corporation), under section 402 of the Not-for-Profit Corporation Law," shall be signed by each incorporator with his name and address stated beneath or opposite his signature, acknowledged and delivered to the department of state. It shall set forth:

(1) The name of the corporation.

(2) That the corporation is a corporation as defined in subparagraph (a) (6) of section 102 (Definitions); the purpose or purposes for which it is formed and the type of corporation it shall be under section 201 (Purposes); and in the case of a Type C corporation, the lawful public or quasi-public objective which each business purpose will achieve.

(3) The city, town or incorporated village, and the county within the state in which the office of the corporation is to be located. It may also set forth the post office address of an office without the state, at which, pursuant to section 621 (Books and records; right of inspection; prima facie evidence), the books and records of account of the corporation shall be kept.

(4) The territory in which its activities are principally to be conducted.

(5) In the case of a Type B or Type C corporation, the names and addresses of the initial directors. In the case of any other type of corporation, the names and addresses of the initial directors, if any, may but need not be set forth.

(6) The duration of the corporation if other than perpetual.

(7) The post office address within or without this state to which the secretary of state shall mail a copy of any notice required by law.

(8) If the corporation is to have a registered agent, his name and address within this state and a statement that the registered agent is to be the agent of the corporation upon whom process against it may be served.

(9) If any approvals or consents are required by this chapter or any other statute of this state before the certificate may be filed, a statement that prior to delivery to the department of state for filing all such approvals or consents will be endorsed upon or annexed to the certificate. If no approval or consent is so required, a statement to that effect.

(10) The statements, if any, with respect to special not-for-profit corporations required under article 14 (Special not-for-profit corporations).

(b) If the certificate is for the incorporation of an existing unincorporated association or group it shall have annexed thereto an affidavit of the subscribers of such certificate stating that they constitute a majority of the members of a committee duly authorized to incorporate such association or group.

(c) The certificate of incorporation may set forth any provision, not inconsistent with this chapter or any other statute of the state, which provision is (1) for the regulation of the internal affairs of the corporation, including types or classes of membership and the distribution of assets on dissolution or final liquidation, or (2) required by any governmental body or officer or other person or body as a condition for giving the consent or approval required for the filing of such certificate of incorporation.

§ 502. Permissible provisions

SOURCE:

Corp. Code § 9303 (nonprofit corporation)(substantially the same)\*

§ 9303. Regulation of corporate affairs. The articles of incorporation may ~~state any desired provision for the regulation of the affairs of the corporation in a manner not in conflict with law, including~~ any restrictions authorized by Article 2, Chapter 1, Part 8, Division 1, Title 1<sup>1</sup> of this code upon the power to amend the articles of incorporation.

set forth any provision not inconsistent with this code or any other

statute of this state for the regulation of the corporation's internal affairs,

COMPARABLE PROVISIONS:

Corp. Code § 302 (business corporation); N.Y. Not-for-Profit Corporation Law § 402(c)\*; Pa. Corporation Not-for-profit Code § 7316(a)(9); ABA-ALI Model Non-Profit Corporation Act § 29(d)

(c) The certificate of incorporation may set forth any provision, not inconsistent with this chapter or any other statute of the state, which provision is (1) for the regulation of the internal affairs of the corporation, including types or classes of membership and the distribution of assets on dissolution or final liquidation, or (2) required by any governmental body or officer or other person or body as a condition for giving the consent or approval required for the filing of such certificate of incorporation.

§ 503. Execution of articles

SOURCE:

Corp. Code § 9304 (nonprofit corporation)(same in substance)\*

§ 9304. Execution of articles

(a) Signatures; acknowledgment; authentication. Except ~~in the case of the incorporation of an unincorporated association, provided for in subdivision (b) hereof,~~ each person named in the articles to act in the capacity of a first director shall, and any other person desiring to associate with those persons in the formation of the corporation may, personally sign the articles of incorporation. All signatures thereto shall be personally acknowledged before an officer designated by the laws of this State as one before whom an acknowledgment may be made. Any certificate of acknowledgment taken without the State shall be authenticated by the certificate of an officer having the requisite official knowledge of the qualification of the officer before whom the acknowledgment was made when taken before any officer other than a notary public or a judge or clerk of a court of record having an official seal.

as

(b) Incorporation of unincorporated associations; affidavit of authorization. In the case of the incorporation of an unincorporated association, the articles of incorporation shall be subscribed and execution thereof personally acknowledged before an officer authorized to take acknowledgments by the presiding officer or acting presiding

officer and the secretary or clerk or similar officer of the association or by at least a majority of its governing board or body, and there shall be attached thereto the affidavit of the subscribing officers, board or body that the association has duly authorized its incorporation and has authorized said officers, board or body to execute the articles of incorporation.

**COMPARABLE PROVISIONS:**

Corp. Code § 307 (business corporation); N.Y. Not-for-Profit Corporation Law § 402(a); Pa. Corporation Not-for-profit Code §§ 7315, 7341

**§ 504. Filing of articles; effect of filing; dissenting member of unincorporated association**

**SOURCE:**

Subdivision (a) derived from Corp. Code § 9304.5 (nonprofit corporation) (same in substance). \* Subdivision (b) derived from N.Y. Not-for-Profit Corporation Law § 403\* and Corp. Code § 9604 (nonprofit corporation)\*

**§ 9304.5** Filing articles; secretary of state; county clerk. If the articles conform to law, the Secretary of State shall file them in his office and shall endorse the date of filing thereon. The corporate existence begins upon the filing of the articles and continues perpetually unless otherwise expressly provided ~~by law~~.

upon  
them

A copy of the articles certified by the Secretary of State and bearing the endorsement of the date of filing in this office shall be filed in the office of the county clerk of the county in which the corporation is to have its principal office and in the office of the county clerk of each county in which the corporation acquires ownership of any real property.

in the  
articles  
or the  
laws of  
this  
state .

**§ 403. Certificate of incorporation; effect**

Upon the filing of the certificate of incorporation by the department of state, the corporate existence shall begin, and such certificate shall be conclusive evidence that all conditions precedent have been fulfilled and that the corporation has been formed under this chapter, except in an action or special proceeding brought by the attorney-general. Where the certificate is for the incorporation of an unincorporated association or group, the members of such association or group shall be members of the corporation so created, and all property owned by or held for it shall belong to and vest in the corporation, subject to all existing incumbrances and claims as if incorporation had not taken place. Where the certificate is for the reincorporation of a corporation created by special law for purposes for which a corporation may be formed under this chapter, such reincorporation

shall not effect a dissolution of the corporation but shall be a continuation of its corporate existence, without affecting its then existing property rights or liabilities, or the liabilities of its members or officers as such, but thereafter it shall have only such rights, powers and privileges, and be subject to such other duties and liabilities as a corporation formed for the same purposes under this chapter.

**§ 9604.** Incorporation of unincorporated association; continuation of members; dissent. If an unincorporated association is incorporated under this part, the members of the association shall be members of the corporation so created, unless they file their dissent in writing with the secretary thereof.

**COMPARABLE PROVISIONS:**

Corp. Code § 308 (business corporation); Pa. Corporation Not-for-profit Code § 7319; ABA-ALI Model Non-Profit Corporation Act § 31

**§ 505. Filing copy of articles with county clerk**

**SOURCE:**

Same in substance as second paragraph of Corp. Code § 9304.5 (nonprofit corporation)\*

**§ 9304.5** Filing articles; secretary of state; county clerk.

\* \* \* \* \*

A copy of the articles certified by the Secretary of State and bearing the endorsement of the date of filing in this office shall be filed in the office of the county clerk of the county in which the corporation is to have its principal office and in the office of the county clerk of each county in which the corporation acquires ownership of any real property.

The corporation shall file a

**COMPARABLE PROVISIONS:**

Corp. Code §§ 311, 312 (business corporation)

**Article 5. Amendment of Articles**

**§ 551. Right to amend the articles**

**SOURCE:**

Derived from N.Y. Not-for-Profit Corporation Law § 801(a)\*

(a) A corporation may amend its certificate of incorporation, from time to time, in any and as many respects as may be desired, if such amendment contains only such provisions as might be lawfully contained in an original certificate of incorporation filed at the time of making such amendment.

**COMPARABLE PROVISIONS:**

Corp. Code §§ 3602, 3603 (business and nonprofit corporations)\*;  
Pa. Corporation Not-for-profit Code § 7901; ABA-ALI Model Non-  
Profit Corporation Act § 33

**§ 3602.** Restoration of superseded provisions; provisions consistent with law; change of corporate existence to new law. By complying with the provisions of this chapter, a corporation may amend its articles for any or all of the following purposes:

(a) To readopt and restore any provision of its articles which has been superseded or changed by any certificate, instrument, or proceeding pursuant to law.

(b) Generally, to add to, omit from, remove, or otherwise alter the provisions thereof in any respect consistent with the law under which the corporation exists or seeks to exist, except that no corporation may amend its articles so as to exist under a law other than that under which it was organized or exists unless the law under which it proposes to exist and be governed by expressly authorizes such change by amendment.

**§ 3603. First directors and subscribers.** A corporation shall not amend its articles to alter the statements which appear in the original articles of the names and addresses of the first directors or of the number of shares subscribed and by whom.

**§ 552. Adoption of amendments generally**

**SOURCE:**

Derived from Corp. Code §§ 3632, 3632.5 (business and nonprofit corporations)\*

**§ 3632. Adoption by directors and shareholders**

After any shares have been issued or subscriptions for shares have been accepted, or members other than the incorporators have been admitted by a nonstock corporation, amendments may be adopted by resolution of the board of directors and the vote or written consent of shareholders holding at least a majority of the voting power, or by two-thirds of a quorum of the members of a nonstock corporation, given either before or after the adoption of the resolution of the board of directors, except that in the case of nonstock corporations where the members have unequal voting power the amendment shall be approved by the vote or written consent of members holding not less than a majority of the voting power.

The articles of incorporation may require the vote or written consent of the holders of any greater percentage or fraction of the outstanding shares of any one or more classes or series for the approval of any amendment of the articles or of amendments of particular kinds or for particular purposes, or may require for such approval the vote or written consent of the holders of a greater percentage or fraction of the voting power or outstanding shares, than would otherwise be required under this article, but in no case may the articles or bylaws prohibit any amendment authorized by this chapter.



**§ 3632.5 Alternate method of adoption: vote or written consent of policymaking committee**

If the bylaws of a nonstock corporation so provide, any member action required for the adoption of amendments to the articles of incorporation may be taken, instead, by the vote or written consent of at least two-thirds of the members of a policymaking committee created by the members of the corporation to represent and act for the corporation members in this matter, with or without authority to represent and act for the corporation members in other matters. Only members of the corporation shall serve on such committee.

**COMPARABLE PROVISIONS:**

N.Y. Not-for-Profit Corporation Law § 802\*; Pa. Corporation Not-for-profit Code § 7904; ABA-ALI Model Non-Profit Corporation Act § 34

**§ 802. Authorization of amendment or change, class vote**

(a) Amendment or change of the certificate of incorporation shall be authorized:

(1) If there are members entitled to vote thereon, by majority vote of such members at a meeting as provided in paragraph (c) of section 611 (Vote of members).

(2) If there are no members entitled to vote thereon, by vote of a majority of the entire board.

(b) Notwithstanding any provision in the certificate of incorporation or by-laws, members of a class shall be entitled to vote and to vote as a class upon the authorization of an amendment and, in addition to the authorization of the amendment required by paragraph (a) (1), the amendment shall be authorized by majority vote of the members of the class, when the proposed amendment would exclude or limit their right to vote on any matter except as such right may be limited by voting rights given to members of an existing class or of a new class.

(c) Any one or more of the following changes may be authorized by or pursuant to authorization of the board:

(1) To specify or change the location of the office of the corporation.

(2) To specify or change the post office address to which the secretary of state shall mail a copy of any notice required by law.

(3) To make, revoke or change the designation of a registered agent, or to specify or change the address of its registered agent.

(d) This section shall not alter the vote required under any other section for the authorization of an amendment referred to therein, nor alter the authority of the board to authorize amendments under any other section.

**§ 553. Adoption by incorporators**

**SOURCE:**

Same as part of Corp. Code § 3630 (business and nonprofit corporations)\*

**§ 3630. Adoption by incorporators; vote required**

~~Before any shares have been issued or subscriptions for shares have been accepted, or before any members of a nonstock corporation other than the incorporators have been admitted, any amendment of the articles may be adopted by a writing signed by two-thirds of the incorporators of the corporation, or in the case of a stock corporation by resolution adopted by not less than two-thirds of the members of the board of directors.~~

§ 554. Minor amendments

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 802(c)\*

(c) Any one or more of the following changes may be authorized by or pursuant to authorization of the board:

- (1) To specify or change the location of the office of the corporation;
- (2) To specify or change the post office address to which the secretary of state shall mail a copy of any notice required by law;
- (3) To make, revoke or change the designation of a registered agent, or to specify or change the address of its registered agent.

COMPARABLE PROVISIONS:

Corp. Code § 3600(c)\*

(c) To change the location of its principal office to any other county within the State; but no amendment need be made to change the principal office from one location to another in the same county.

§ 555. Form of amendment; construction

SOURCE:

Corp. Code § 3631 (business and nonprofit corporations) (substantially the same)\*

§ 3631. Form of amendment; construction

(a) The resolution of the board of directors and the ~~resolution or~~ consents of the shareholders approving any amendment, or the writing signed by the incorporators, shall establish the wording of the amendment or amended articles by one or more of the following means:

vote or written

(1) By providing that the articles shall be amended to read as therein set forth in full.

members

(2) By providing that any provision of the articles, which shall be identified by the amendment or other designation given it in the articles or by stating the wording thereof, shall be stricken from the articles or shall be amended to read as set forth in full in the resolution or consent or writing.

~~(c) By providing that the matter therein stated shall be added to the articles.~~

~~If the purpose of the amendment is to effect a stock split or reverse stock split or to reclassify or otherwise change outstanding shares, the amendment or amended articles shall state the effect thereof on outstanding shares.~~

(b) The wording of any provision proposed to be amended or stricken from the articles or readopted and restored shall be deemed to be that which is contained in the original articles, unless such wording has been changed pursuant to a statute which expressly authorized the amendment of articles, in which event such wording shall be deemed to be that which is provided for in the document or documents filed for the purpose of making such amendment effective. No change which has become effective pursuant to any statute which did not expressly provide for the amendment of articles shall be deemed to have the effect of impliedly amending the affected provision of the articles so as to read in conformity with such change.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 803; Pa. Corporation Not-for-profit Code § 7902(b)\*; ABA-ALI Model Non-Profit Corporation Act § 35

(b) **Form of amendment.**—The resolution or petition shall contain the language of the proposed amendment to the articles by providing that the articles shall be amended so as to read as therein set forth in full, or that any provision thereof be amended so as to read as therein set forth in full, or that the matter stated in the resolution or petition be added to or stricken from the articles. The resolution or petition may set forth the manner and basis of reclassifying the shares of the corporation.

§ 556. Certificate of amendment

**SOURCE:**

Derived from Corp. Code §§ 3671, 3672 (business and nonprofit corporations)\*

**3671. Amendment by incorporators; contents of certificate; signing and verification**

In the case of amendments adopted by the incorporators the certificate shall show that the signers thereof constitute at least two-thirds of the incorporators, and that they adopt the amendment or amendments therein set forth. In the case of a stock corporation the certificate shall set forth that it has issued no shares and has no subscription to shares outstanding and if the amendment or amendments be adopted by the directors the certificate shall also set forth a copy of the resolution or resolutions by which the amendment or amendments were adopted and show that the resolution or resolutions were adopted by the vote of at least two-thirds of the board of directors. If the amendment or amendments be adopted by the incorporators the certificate shall be signed by not less than two-thirds of the incorporators, or if the amendment or amendments be adopted by the directors the certificate shall be signed by not less than two-thirds of the board of directors, and, in either case, the certificate shall be verified by the signed affidavits of the persons signing the certificate stating, in effect and under oath, that the matters set forth in the certificate are true of their own knowledge. In the case of a nonstock corporation the certificate shall set forth that the corporation has admitted no members other than the incorporators. The certificate shall be signed by at least two-thirds of the incorporators, and shall be verified by their signed affidavit stating, in effect and under oath, that the matters set forth in the certificate are true of their own knowledge.

3672. In the case of amendments adopted after the issuance of shares or while any subscription to shares is outstanding prior to the issuance of any shares or after members other than the incorporators have been admitted by a nonstock corporation, the certificate shall be signed by the president or a vice president and the secretary or an assistant secretary, and shall be verified by their affidavit stating, in effect, that the matters set forth in the certificate are true of their own knowledge.

The certificate shall set forth the following:

(a) If the amendment is one for the adoption of which a resolution of the board of directors alone is required, a copy of the resolution of the board of directors.

(b) If the amendment is one for the adoption or approval of which the vote or consent of the shareholders or members alone is required, a copy of the resolution adopting the amendment; the time and place of the meeting at which the resolution was adopted, and the number of shares or members voting in favor of the resolution; or if approval was by written consent, a copy of the form of written consent; the number of shares or members consenting; and in either case, the total

number of shares entitled to vote on or consent to the amendment, or, in the case of a nonstock corporation, the number of members constituting a quorum, except that in the case of nonstock corporations having members with unequal voting power the certificate shall state that fact and shall state the total number of votes entitled to be voted for or to consent to the amendment and the number of votes east for or consenting to the amendment; and, except further, that if the member approval was given by a policymaking committee created by the members pursuant to Section 3632.5, to represent and act for the members in the matter, the certificate shall state that fact and shall state the number of committee members voting for or consenting to the amendment and the total number of committee members entitled to vote on or consent to the amendment.

(c) If the amendment is one which is required to be adopted by the vote of different classes of shares, the total number of outstanding shares of each class and the number of shares of each class consenting to or voting in favor of the resolution amending the articles.

(d) If the holders of any class of shares or memberships are entitled to more or less than one vote per share or membership, the total number of votes entitled to be cast or to be represented by written consents and the total number of votes cast in favor of the proposed amendment or represented by the written consents thereto.

(e) If the amendment is one for the adoption of which the approval of both the board of directors and the shareholders or members is required, the certificate shall set forth the matter required by subdivision (a) and the matter required by subdivisions (c) and (d) if applicable. The certificate shall also set forth the matter required by subdivision (b), except that it need not set out a copy of the shareholders' resolution or written consent adopting the amendment, but in lieu thereof the certificate shall state that the wording of the amended article or articles as set forth in the shareholders' resolution or written consent is the same as that set forth in the directors' resolution.

**COMPARABLE PROVISIONS:**

N.Y. Not-for-Profit Corporation Law § 803; ABA-ALI Model Non-Profit Corporation Act § 35

**§ 557. Filing of certificate**

**SOURCE:**

Derived from Corp. Code §§ 3673, 3674 (business and nonprofit corporations)\*

**§ 3673. Filing with secretary of state; certified copy as prima facie evidence.** The certificate shall be submitted to the Secretary of State. If he finds that it shows a compliance with the provisions of the law he shall file it and put an endorsement of filing thereon. Thereupon the articles of incorporation shall be deemed amended in accordance with the certificate, and a copy of the certificate, certified by the Secretary of State, is prima facie evidence of the performance of the conditions necessary to the adoption of the amendment.

**§ 3674.** Filing with county clerk. The corporation shall file a copy of the certificate, certified by the Secretary of State, with the county clerk of the county in which the principal office of the corporation is located and of every county in which the corporation holds real property.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 803(a); Pa. Corporation Not-for-profit Code § 7906; ABA-ALI Model Non-Profit Corporation Act § 36

§ 558. Restatement of articles

SOURCE:

Corp. Code § 3800 (business and nonprofit corporations) (substantially the same)\*

**§ 3800.** Resolution of directors; contents of resolution; certificate of restatement. A corporation may restate in a single certificate the entire text of its articles of incorporation as amended by filing ~~in the Office of~~ the Secretary of State a certificate entitled "Restated Articles of Incorporation of (insert name of corporation)" which shall set forth the articles as amended to the date of the certificate but the certificate shall not itself alter or amend the articles in any respect except that the signatures and acknowledgments of the incorporators may be omitted.

with

The certificate shall be signed by the ~~president or vice-president and the secretary or an assistant secretary, or corresponding officers, of the corporation, and shall be verified by their signed affidavits that they have been authorized to execute the certificate by resolution of the board of directors adopted on the date stated, and that the certificate correctly sets forth the text of the articles of incorporation as amended to the date of the certificate.~~

chief officer  
or any two  
subordinate  
officers of  
the corpora-  
tion

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 805; ABA-ALI Model Non-Profit Corporation Act § 37

§ 559. Filing certificate of restatement

SOURCE:

Corp. Code § 3802 (business and nonprofit corporations) (same in substance)\*

**§ 3802.** Certificate of restatement, filing certified copies. Whenever a corporation is required to file in any office in this State, a certified copy of its articles pursuant to any provision of ~~this code~~, in lieu of filing a certified copy of the original articles and certified copies of all certificates amendatory of or supplementary to the original articles, it may file a certified copy of the most recent certificate re-

Law

stating its articles as amended, filed pursuant to this article, together with certified copies of all certificates of amendment filed subsequent to the restated articles and certified copies of all certificates supplementary to the original articles.

**COMPARABLE PROVISIONS:**

N.Y. Not-for-Profit Corporation Law § 805(f)

**§ 560. Effect of article**

**SOURCE:**

Derived from N.Y. Not-for-Profit Corporation Law § 802(d)\*

(d) This section shall not alter the vote required under any other section for the authorization of an amendment referred to therein, nor alter the authority of the board to authorize amendments under any other section.

**COMPARABLE PROVISIONS:**

No comparable provision in the Corporations Code

**§ 561. Action by Attorney General, member, officer, or director**

**SOURCE:**

New

**COMPARABLE PROVISIONS:**

N.Y. Not-for-Profit Corporation Law § 804\*

**§ 804. Approvals and effect**

(a) A certificate of amendment shall not be filed if the amendment adds, changes or eliminates a purpose, power or provision the inclusion of which in a certificate of incorporation requires consent or approval of a justice of the supreme court, a governmental body or officer or any other person or body, or the giving of notice to the attorney-general, or if the amendment changes the name of a corporation whose certificate of incorporation had such consent or approval endorsed thereon or annexed thereto, unless such consent or approval is endorsed on or annexed to the certificate of amendment and the notice to the attorney general has been given as required by law.

(b) The department of state shall not file a certificate of amendment reviving the existence of a corporation unless the consent or approval of the justice of the supreme court, a governmental body or officer or any other person or body required to be endorsed on or annexed to the certificate of incorporation of a corporation formed for similar purposes, is attached thereto, or, if notice to the attorney-general was required prior to the filing of its certificate of incorporation, the certificate of amendment should indicate that such notice has been given as required by law.

(c) The department of state shall not file a certificate of amendment reviving the existence of a corporation if the name of the corporation being revived is not available under section 301 (Corporate name; general) for use by a corporation then being formed under this chapter, unless the certificate of amendment shall change the name to one which is available for such use.

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

## Article 6. Bylaws

### § 601. Required provisions

#### SOURCE:

Same in substance as part of Corp. Code § 9301 (nonprofit corporation)\*

**§ 9301. Members and membership rights; dues and assessments.**

Except to the extent the articles of incorporation expressly provide for the following, the bylaws shall set forth:

(a) The authorized number and qualifications of members of the corporation ~~and, if any,~~ the different classes of membership ~~if any~~ .

(b) ~~the~~ The property, voting, and other rights and privileges of members ~~and their~~ .

(c) The liability ~~to~~ of members for dues or assessments and the method of collection thereof ~~shall be set forth either in the articles or in the bylaws, which shall not, however, provide for the issuance of more than one membership to any member~~ .

(d) If the voting, property or other rights or interests, or any of them, be unequal, ~~the articles or bylaws shall set forth~~ the rule or rules by which the respective voting, property or other rights or interests of each member or class of members are fixed and determined.

The articles or by-laws may authorize dues or assessments or both to be levied upon all members or classes of membership alike, or in different amounts or proportions or upon a different basis upon different members or classes of membership and may exempt some members or classes of membership from either dues or assessments, or both.

The articles or by-laws may fix the amount and method of collection of dues or assessments or both, or may authorize the board of directors to fix the amount thereof from time to time, and make them payable at such times or intervals, and upon such notice, and by such methods as the directors may prescribe. Dues or assessments or both may be made enforceable by action or by the sale or forfeiture of membership, or both, upon reasonable notice.

**§ 602. Permissible provisions**

**SOURCE:**

Derived from N.Y. Not-for-Profit Corporation Law § 602(f)\*

(f) The by-laws may contain any provision relating to the business of the corporation, the conduct of its affairs, its rights or powers or the rights or powers of its members, directors or officers, not inconsistent with this chapter or any other statute of this state or the certificate of incorporation.

**COMPARABLE PROVISIONS:**

Corp. Code §§ 9401, 9402, 9403 (nonprofit corporation)\*; § 501; Pa. Corporation Not-for-profit Code § 7504; ABA-ALI Model Non-Profit Corporation Act § 12

**§ 9401. Permissible provisions.** The by-laws of a nonprofit corporation may make provisions for:

(a) The time, place, and manner of calling, giving notice of, and conducting regular and special meetings of members or directors, which may be held outside the State. The by-laws may dispense with notice of all regular members' and directors' meetings.

(b) The requirements of a quorum of directors or members, which may be greater or less than a majority.

(c) Subject to any provisions in the articles, the number, time and manner of choosing, qualifications, terms of office, official designations, powers, duties, and compensation of the directors and other officers.

(d) The appointment and authority of executive or other committees of the board of directors.

**§ 9402. Members and membership rights.** The by-laws of a nonprofit corporation may make provisions for:

(a) The admission, election, appointment, withdrawal, suspension, and expulsion of members.

(b) The qualifications of members and different classes of memberships, and the property, voting, and other rights, interests, or privileges, or any of them, of members or classes of members.

(c) The transfer, forfeiture, and termination of membership, and whether the property interest of members shall cease at their death or the termination of membership, and the mode of ascertaining the property interest, if any, at death or the termination of membership.



(d) The manner of voting by members and whether cumulative voting and proxy voting shall be allowed.

(e) The making of annual reports and financial statements to the members.

**§ 9403. Fees; dues; assessments.** The by-laws of a nonprofit corporation may make provisions for fees of admission and transfer fees, and, subject to any provisions in the articles, may provide pursuant to Section 9301 for dues and assessments to be paid by members or different classes of members and the methods of collection thereof.

**§ 603. Adoption; amendment; repeal**

**SOURCE:**

Derived from Corp. Code § 9400 (nonprofit corporation)\*

9400. Bylaws may be adopted, amended or repealed by any of the following:

(a) By the written consent of members entitled to exercise a majority of the voting power, or by the vote of a majority of a quorum at a meeting of members duly called for the purpose according to the articles or bylaws.

(b) Except as provided in subdivision (c), by the board of directors, subject to the power of the members to change or repeal the bylaws.

(c) A bylaw or bylaw amendment fixing or changing the authorized number of directors may be adopted only by the members and may not be adopted by the board of directors except where the articles or bylaws provide for an indefinite number of directors pursuant to subdivision (e) of Section 9300.

However, the articles or bylaws may require the vote or written consent of members entitled to exercise a greater fraction or percentage of the voting power for the amendment or repeal of bylaws generally, or of particular bylaws, or for the adoption of new bylaws than would otherwise be required under this section. The articles or a bylaw adopted by the members may limit or restrict the power of the directors to adopt, amend, or repeal bylaws, or may deprive them of the power.

**COMPARABLE PROVISIONS:**

Corp. Code § 500 (business corporation); N.Y. Not-for-Profit Corporation Law § 602; Pa. Corporation Not-for-profit Code § 7504; ABA-ALI Model Non-Profit Corporation Act § 12

**§ 604. Record book**

**SOURCE:**

Corp. Code § 9404 (nonprofit corporation) (same)

**COMPARABLE PROVISIONS:**

Corp. Code § 502 (business corporation)

CHAPTER 3. MEMBERS

Article 1. Members Generally

§ 701. Members

SOURCE:

Subdivision (a) is derived from N.Y. Not-for-Profit Corporation Law § 601(a)\*; subdivision (b) is the same in substance as Corp. Code § 9603 (nonprofit corporation)\*; subdivision (c) is new (codifies holding in Coon v. Freeman, 1 Cal.3d 542, 463 P.2d 441, 83 Cal. Rptr. 217 (1970)).

(a) A corporation shall have one or more classes of members, or, in the case of a Type B corporation, may have no members, in which case any such provision for classes of members or for no members shall be set forth in the certificate of incorporation or the by-laws. Corporations, joint-stock associations, unincorporated associations and partnerships, as well as any other person without limitation, may be members.

If

§ 9603. Directors as members; exercise of members' rights and powers by board. ~~Where, neither the articles nor by-laws of a nonprofit corporation provide for members thereof as such, and in any case in which any nonprofit corporation has, in fact, no members~~ other than the persons constituting its board of directors, the persons for the time being constituting its governing body or board are, ~~for the purpose of any statutory provision or rule of law relating to nonprofit corporations, the members of the corporation and shall exercise all the rights and powers of members thereof.~~

and there are

the

COMPARABLE PROVISIONS:

Pa. Corporation Not-for-profit Code § 7751; ABA-ALI Model Non-Profit Corporation Act § 11

§ 702. Classes of members

SOURCE:

Corp. Code § 9602 (nonprofit corporation) (substantially the same as part)\*

§ 9602. Membership classes; voting, property and other rights. ~~A nonprofit corporation shall have such memberships or classes thereof as the articles or by-laws specify, but no member may hold more than one membership, and in the absence of any such classification of members there shall be deemed to be but one class~~ may have one or more classes of members. Any provision for classes of members shall be set forth in the articles or bylaws. If there is no such provision, the corporation has only one class of members. Unless

the articles or by-laws set forth the rule or rules fixing the respective voting, property and other rights and interests of each member or class of members, the rights and interests of members shall be equal as to any right or interest not so fixed.

**COMPARABLE PROVISIONS:**

N.Y. Not-for-Profit Corporation Law § 601; Pa. Corporation Not-for-profit Code § 7751; ABA-ALI Model Non-Profit Corporation Act § 11

**§ 703. Membership certificates**

**SOURCE:**

Derived from Corp. Code § 9607\*; N.Y. Not-for-Profit Corporation Law § 601(c), (d)\*

**§ 9607. Membership certificates.** Membership in nonprofit corporations may be evidenced by certificates. A statement that the corporation is not one for profit shall be printed in clear type upon the face of each such certificate.

**§ 601. Members**

\* \* \* \* \*

(c) If the corporation has members, membership may be effected and evidenced by:

- (1) Signature on the certificate of incorporation.
- (2) Designation in the certificate of incorporation or the by-laws.
- (3) Membership certificate or card or capital certificate.
- (4) Such method, including but not limited to the foregoing, as is prescribed by the certificate of incorporation or the by-laws.

(d) Membership certificates or cards shall not be transferable. If the certificate of incorporation or by-laws permits transfer of membership, upon each such transfer the certificate or card issued to a former member shall be surrendered, and a new certificate or card shall be issued to the new member.

**COMPARABLE PROVISIONS:**

Pa. Corporation Not-for-profit Code § 501; ABA-ALI Model Non-Profit Corporation Act § 11

**§ 704. Termination of membership**

**SOURCE:**

Subdivision (a) is the same in substance as part of Corp. Code § 9608 (nonprofit corporation)\*; subdivision (b) is derived from Pa. Cor-

poration Not-for-profit Code § 7767\*; subdivision (c) is new (codifies Haynes v. Annandale Golf Club, 4 Cal.2d 28, 47 P.2d 470 (1935)).

§ 9608. **Termination of membership; effect.** Memberships may be terminated in the manner provided in the articles or by-laws. Unless the articles, the by-laws, or the law under which the corporation was formed provide otherwise, all the rights of a member in the corporation, or in its property, cease on death, ~~or other termination~~ of his membership resignation, expulsion, or expiration of a term of membership.

§ 7767. **Termination and transfer of membership**

(a) **General rule.**—Membership in a nonprofit corporation shall be terminated in the manner provided in a bylaw adopted by the members. If the membership in any such corporation is limited to persons who are members in good standing in another corporation, or in any lodge, church, club, society or other entity or organization, the bylaws shall in each case define such limitations, and may provide that failure on the part of any such member to keep himself in good standing in such other entity or organization shall be sufficient cause for expelling the member from the corporation requiring such eligibility.

(b) **Expulsion.**—

(1) No member shall be expelled from any nonprofit corporation without notice, trial and conviction, the form of which shall be prescribed by the bylaws.

(2) Paragraph (1) of this subsection shall not apply to termination of membership pursuant to section 7545 of this title (relating to enforcement of payment of fees, dues and assessments).

(c) **Effect of termination of membership.**—Unless otherwise provided in the bylaws, the right of a member of a nonprofit corporation to vote, and his right, title and interest in or to the corporation or its property, shall cease on the termination of his membership.

(d) **Transfer of membership.**—Unless otherwise provided in the bylaws, no member may transfer his membership or any right arising therefrom.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 601(e)

§ 705. **Transfer of membership**

SOURCE:

Corp. Code § 9609 (nonprofit corporation) (same)\*

§ 9609. **Transfer of membership.** No member may transfer his membership or any right arising therefrom, unless the articles or by-laws so provide.

COMPARABLE PROVISIONS:

Pa. Corporation Not-for-profit Code § 7767(d)

§ 706. Property and other rights of members

SOURCE:

Corp. Code § 9602 (nonprofit corporation)(same in substance as part)\*

**§ 9602. Membership classes; voting, property and other rights.** A nonprofit corporation shall have such memberships or classes thereof as the articles or by-laws specify, but no member may hold more than one membership, and in the absence of any such classification of members there shall be deemed to be but one class. Unless the articles or by-laws set forth the rule or rules fixing the respective voting, property and other rights and interests of each member or class of members, the rights and interests of members ~~shall be~~ are equal as to any right or interest not so fixed.

§ 707. Liability of members

SOURCE:

Corp. Code § 9610(nonprofit corporation)(same)\*

**§ 9610. Liability of members.** Members of a nonprofit corporation are not personally liable for the debts, liabilities, or obligations of the corporation.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 517\*; ABA-ALI Model Non-Profit Corporation Act § 11

**§ 517. Liabilities of members**

(a) The members of a corporation shall not be personally liable for the debts, liabilities or obligations of the corporation.

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

§ 708. Dues; assessments

SOURCE:

Corp. Code §§ 9611 (nonprofit corporation) (same in substance)\*, 9301 (nonprofit corporation) (same as part)\*

§ 9611. Dues; assessments. ~~Nonprofit corporations~~ may levy dues or assessments or both upon ~~their~~ members pursuant to any provisions of ~~their~~ articles or by-laws authorizing the levy of dues or assessments.

A nonprofit corporation

its

§ 9301. Members and membership rights; dues and assessments. The authorized number and qualifications of members of the corporation, the different classes of membership, if any, the property, voting, and other rights and privileges of members, and their liability to dues or assessments and the method of collection thereof, shall be set forth either in the articles or in the by-laws, which shall not, however, provide for the issuance of more than one membership to any member.

If the voting, property or other rights or interests, or any of them, be unequal, the articles or by-laws shall set forth the rule or rules by which the respective voting, property or other rights or interests of each member or class of members are fixed and determined.

The articles or by-laws may authorize dues or assessments or both to be levied upon all members or classes of membership alike, or in different amounts or proportions or upon a different basis upon different members or classes of membership and may exempt some members or classes of membership from either dues or assessments, or both.

The articles or by-laws may fix the amount and method of collection of dues or assessments or both, or may authorize the board of directors to fix the amount thereof from time to time, and make them payable at such times or intervals, and upon such notice, and by such methods as the directors may prescribe. Dues or assessments or both may be made enforceable by action or by the sale or forfeiture of membership, or both, upon reasonable notice.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 507\*; Pa. Corporation Not-for-profit Code § 7545

§ 507. Fees, dues and assessments; fines and penalties

(a) If authorized by its certificate of incorporation or by-laws and subject to any limitations stated therein, a corporation may levy initiation fees, dues and assessments on its members, whether or not they are voting members, and may impose reasonable fines or other penalties upon its members for violations of its rules and regulations.

(b) Initiation fees, dues or assessments may be levied on all classes of members alike or in different amounts or proportions

for different classes of members, as the certificate of incorporation or the by-laws may provide, but in all cases the fees, dues and assessments payable by members of one class shall be determined upon the same basis.

(c) The certificate of incorporation or the by-laws may contain such provisions as are deemed necessary to enforce the collection of fees, dues, assessments, fines or other penalties, including provisions for the termination of membership, upon reasonable notice, for non-payment of such fees, dues, assessments, fines or other penalties, and provisions for reinstatement of membership.

(d) Subject to the provisions of this chapter, the certificate of incorporation may provide that members paying initiation fees, dues or assessments shall, upon dissolution of the corporation, have distributive rights in its assets. The distributive rights may be different for different classes of members, but in all cases the rights of members of one class shall be the same.

#### § 709. Reduction of members below stated number

**SOURCE:**

Corp. Code § 9605 (nonprofit corporation) (substantially the same)\*

**§ 9605.** Reduction of members below stated number; effect of reduction; authority to fill vacancies. ~~If the members of a nonprofit corporation having a stated number of members are reduced below that number by death, withdrawal, or otherwise, the corporation shall not be dissolved for that reason; but the surviving or continuing members, or member, may fill vacancies and continue the corporate existence, unless the articles or by-laws provide otherwise.~~

Unless the articles provide otherwise, if

, and

#### Article 2. Meetings of Members; Voting

#### § 751. Regular and annual meetings

**SOURCE:**

Derived from Pa. Corporation Not-for-profit Code § 7755(a)\*

**§ 7755.** Time of holding meetings of members

(a) Regular meetings.—The bylaws of a nonprofit corporation may provide for the number and the time of meetings of members, but unless otherwise provided in a bylaw adopted by the members at least one meeting of the members of a corporation which has members, as such, entitled to vote, shall be held in each calendar year for the election of directors, at such time as shall be provided in or fixed pursuant to authority granted by the bylaws. Failure to hold the annual or other regular meeting at the designated time shall not work a dissolution of the corporation. If the annual or other regular meeting shall not be called and held within six months after the designated time, any member may call such meeting at any time thereafter.

COMPARABLE PROVISIONS:

Corp. Code §§ 2200, 2201 (business corporation)\*; 9401(a) (non-profit corporation)\*; N.Y. Not-for-Profit Corporation Law § 603; ABA-ALI Model Non-Profit Corporation Act § 13

**§ 2200. Annual meeting; time and place.** An annual meeting of shareholders shall be held at 11 o'clock in the morning on the first Tuesday of April in each year at the principal office of the corporation, unless a different time or place is provided in the by-laws.

**§ 2201. Business of annual meeting; proposals requiring special notice.** At the annual meeting directors shall be elected, reports of the affairs of the corporation shall be considered, and any other business may be transacted which is within the powers of the shareholders, except that action shall not be taken on any of the following proposals unless written notice of the general nature of the business or proposal has been given as in case of a special meeting, even though notice of regular or annual meetings is otherwise dispensed with:

(a) A proposal to sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of the property or assets of the corporation except under Section 3900.

(b) A proposal to merge or consolidate with another corporation, domestic or foreign.

(c) A proposal to reduce the stated capital of the corporation.

(d) A proposal to amend the articles, except to extend the term of the corporate existence.

(e) A proposal to wind up and dissolve the corporation.

(f) A proposal to adopt a plan of distribution of shares, securities, or any consideration other than money in the process of winding up.

**§ 9401. Permissible provisions.**

\* \* \* \* \*

(a) The time, place, and manner of calling, giving notice of, and conducting regular and special meetings of members or directors, which may be held outside the State. The by-laws may dispense with notice of all regular members' and directors' meetings.



**§ 752. Special meetings**

**SOURCE:**

Derived from N.Y. Not-for-Profit Corporation Law § 603(c)\*

(c) Special meetings of the members may be called by the board and by such person or persons as may be authorized by the certificate of incorporation or the by-laws. In any case, such meetings may be convened by the members entitled to cast ten per cent of the total number of votes entitled to be cast at such meeting, who may, in writing, demand the call of a special meeting specifying the date and month thereof, which shall not be less than two nor more than three months from the date of such written demand. The secretary of the corporation upon receiving the written demand shall promptly give notice of such meeting, or if he fails to do so within five business days thereafter, any member signing such demand may give such notice. The meeting shall be held at the place fixed in the by-laws or, if not so fixed, at the office of the corporation.

**COMPARABLE PROVISIONS:**

Corp. Code §§ 9600 (nonprofit corporation)\*, 2202 (business corporation); Pa. Corporation Not-for-profit Code § 7755(b); ABA-ALI Model Non-Profit Corporation Act § 13

**§ 9600. Meetings; call.** Subject to any provisions of the articles or by-laws, meetings of members of nonprofit corporations shall be called and held as may be ordered by the directors or by members holding not less than one-tenth of the voting power of members.

**§ 753. Adjournments**

**SOURCE:**

Derived from Pa. Corporation Not-for-profit Code § 7755(c)\*

(c) Adjournments.—Adjournments of any regular or special meeting may be taken, but any meeting at which directors are to be elected shall be adjourned only from day to day, or for such longer periods not exceeding 15 days each, as the members present entitled to cast at least a majority of the votes which all members present and voting are entitled to cast shall direct, until such directors have been elected.

**COMPARABLE PROVISIONS:**

Corp. Code §§ 2208, 2213 (business and nonprofit corporations)\*

**§ 2208. Notice of adjourned meeting.** When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. When a meeting is adjourned for less than 30 days, it is not necessary to give any notice of the time and place of the adjourned meeting or of the business to be transacted thereat other than by announcement at the meeting at which the adjournment is taken, unless the by-laws provide otherwise.

**§ 2213. Adjournment for lack of quorum.** In the absence of a quorum any meeting of shareholders may be adjourned from time to time by the vote of a majority of the shares, the holders of which are either present in person or represented by proxy thereat, but no other business may be transacted.

**§ 754. Notice to members of meetings**

**SOURCE:**

Subdivisions (a) and (b) are derived from Corp. Code §§ 2205, 2206 (business corporations)\*; subdivisions (c) and (d) are derived from N.Y. Not-for-Profit Corporation Law § 605(a)\*; subdivision (e) is the same in substance as N.Y. Not-for-Profit Corporation Law § 606\*; subdivision (f) is derived from Corp. Code § 9401(a) (nonprofit corporation)\*.

**§ 2205. Means of giving notice; place.** A notice may be given by the corporation to any shareholder, either personally or by mail or other means of written communication, charges prepaid, addressed to the shareholder at his address appearing on the books of the corporation or given by him to the corporation for the purpose of notice. If a shareholder gives no address, notice is duly given him if sent by mail or other means of written communication addressed to the place where the principal office of the corporation is situated, or if published at least once in some newspaper of general circulation in the county in which the office is located.

**§ 2206. Time of notice.** Notice of any meeting of shareholders shall be sent to each shareholder entitled thereto not less than seven days before the meeting, unless the by-laws provide otherwise.

**§ 606. Notice of meeting of members**

(a) Whenever under the provisions of this chapter members are required or permitted to take any action at a meeting, written notice shall state the place, date and hour of the meeting and, unless it is an annual meeting, indicate that it is being issued by or at the direction of the person or persons calling the meeting. Notice of a special meeting shall also state the purpose or purposes for which the meeting is called. A copy of the notice of any meeting shall be given, personally or by mail, to each member entitled to vote at such meeting. If the notice is given personally or by first class mail, it shall be given not less than ten nor more than fifty days before the date of the meeting; if mailed by any other class of mail, it shall be given not less than thirty nor more than sixty days before such date. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the member at his address as it appears on the record of members, or, if he shall have filed with the secretary of the corporation a written request that notices to him be mailed to some other address, then directed to him at such other address. An affidavit of the secretary or other person giving the notice or of a transfer agent of the corporation that the notice required by this section has been given shall, in the absence of fraud, be prima facie evidence of the facts therein stated. Whenever a corporation has more than five hundred members, the notice may be served by publication, in lieu of mailing, in a newspaper published in the county in the state in which the principal office of the corporation is located, once a week for three successive weeks next preceding the date of the meeting.

**§ 606. Waivers of notice**

Notice of meeting need not be given to any member who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him.

**§ 9401. Permissible provisions.**

\* \* \* \* \*  
(a) The time, place, and manner of calling, giving notice of, and conducting regular and special meetings of members or directors, which may be held outside the State. The by-laws may dispense with notice of all regular members' and directors' meetings.

**COMPARABLE PROVISIONS:**

ABA-ALI Model Non-Profit Corporation Act § 14

**§ 755. Quorum**

**SOURCE:**

Subdivisions (a) and (b) are derived from part of Corp. Code § 2211 (business and nonprofit corporations)\*; subdivision (c) is the same in substance as Corp. Code § 2213 (business and nonprofit corporations)\*; subdivision (d) is the same in substance as Corp. Code § 2212 (business and nonprofit corporations)\*.

**§ 2211. Quorum**

The presence in person or by proxy of the persons entitled to vote a majority of the voting shares at any meeting constitutes a quorum for the transaction of business unless, in the case of a nonprofit corporation or a mutual water company, the bylaws provide a different number. In a mutual water company the bylaws shall not provide for a quorum of less than 20 percent of the voting shares.

Shares shall not be counted to make up a quorum for a meeting if voting of them at the meeting has been enjoined or for any reason they cannot be lawfully voted at the meeting.

**§ 2213. Adjournment for lack of quorum.** ~~In the absence of a quorum any meeting of shareholders may be adjourned from time to time by the vote of a majority of the shares, the holders of which are either present in person or represented by proxy thereat, but no other business may be transacted.~~ The members by a majority vote of those present may adjourn the meeting despite the absence of a quorum.

**§ 2212. Effect of withdrawal of shareholders.** The ~~shareholders~~ members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment notwithstanding the withdrawal of enough ~~shareholders~~ members to leave less than a quorum.

members

**COMPARABLE PROVISIONS:**

N.Y. Not-for-Profit Corporation Law § 608; Pa. Corporation Not-for-profit Code § 7756; ABA-ALI Model Non-Profit Corporation Act § 16

**§ 756. Record date for determining members**

**SOURCE:**

Corp. Code § 2214 (business and nonprofit corporations) (same in substance)\*

**§ 2214. Record date for determining shareholders; closing books to transfers**

Unless the articles or by-laws otherwise provide, the board of directors may fix a time in the future as a record date for the determination of the ~~shareholders~~ <sup>members</sup> entitled to notice of and to vote at any meeting of ~~shareholders~~ <sup>members</sup> or entitled to receive any dividend or distribution, or any allotment of rights, or to exercise rights in respect to any change, conversion, or exchange of shares. The record date so fixed shall be not more than 50 days prior to the date of the meeting or event for the purposes of which it is fixed. When a record date is so fixed, only ~~shareholders~~ <sup>members</sup> of record on that date are entitled to notice of and to vote at the meeting or to receive the dividend, distribution, or allotment of rights, or to exercise the rights, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the record date.

The board of directors may close the books of the corporation against transfers of shares during the whole or any part of a period of not more than 50 days prior to the date of a shareholders' meeting, the date when the right to any dividend, distribution, or allotment of rights vests, or the effective date of any change, conversion, or exchange of shares.

members

other vote

members

or other vote of the members

of membership

membership pursuant to the articles or bylaws

**COMPARABLE PROVISIONS:**

N.Y. Not-for-Profit Corporation Law § 611; Pa. Corporation Not-for-profit Code § 7761

**§ 757. List of members eligible to vote**

**SOURCE:**

Derived from N.Y. Not-for-Profit Corporation Law § 607\*

**§ 607. List or record of members at meetings**

A list or record of members entitled to vote, certified by the corporate officer responsible for its preparation or by a transfer agent, shall be produced at any meeting of members upon the request therefor of any member who has given written notice to the corporation that such request will be made at least ten days prior to such meeting. If the right to vote at any meeting is challenged, the inspectors of election, or the person presiding thereat, shall require such list or record of members to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such list or record to be members entitled to vote thereat may vote at such meeting.

**COMPARABLE PROVISIONS:**

Pa. Corporation Not-for-profit Code § 7758(e)

§ 758. Voting rights; voting by class; manner of voting

SOURCE:

Subdivisions (a), (c), and (d) are derived from Corp. Code § 9601 (nonprofit corporation)\*; subdivision (b) is derived from N.Y. Not-for-Profit Corporation Law § 616\*.

**§ 9601.** Voting rights; proxy; means of voting. Unless the articles or by-laws provide otherwise, every member of a nonprofit corporation is entitled to one vote and may vote or act by proxy. The manner of voting may be by ballot, mail, or any reasonable means provided in the articles or by-laws. No member may cumulate his votes unless the articles or by-laws so provide.

**§ 616.** Voting by class of members

(a) The certificate of incorporation or the by-laws may contain provisions specifying that any class or classes of members shall vote as a class in connection with the transaction of any business or of any specified item of business at a meeting of members, including amendments to the certificate of incorporation.

(b) Where voting as a class is provided in the certificate of incorporation or the by-laws, it shall be by the proportionate vote so provided or, if no proportionate vote is provided, in the election of directors, by a plurality of the votes cast at such meeting by the members of such class entitled to vote in the election, or for any other corporate action, by a majority of the votes cast at such meeting by the members of such class entitled to vote thereon.

(c) Such voting by class shall be in addition to any other vote, including vote by class, required by this chapter or by the certificate of incorporation or the by-laws as permitted by this chapter.

COMPARABLE PROVISIONS:

Corp. Code § 2234 (business corporation); Pa. Corporation Not-for-profit Code § 7758; ABA-ALI Model Non-Profit Corporation Act § 15

§ 759. Cumulative voting

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 617\*

**§ 617.** Cumulative voting

The certificate of incorporation or the by-laws of any corporation may provide that in all elections of directors of such corporation each member shall be entitled to as many votes as

shall equal the number of votes which, except for such provisions as to cumulative voting, he would be entitled to cast for the election of directors multiplied by the number of directors to be elected, and that he may cast all of such votes for a single director or may distribute them among the number to be voted for, or for any two or more of them, as he may see fit, which right, when exercised, shall be termed cumulative voting.

**COMPARABLE PROVISIONS:**

Corp. Code § 9601 (last sentence) (nonprofit corporation)\*

9601. . . . No member may cumulate his votes unless the articles or by-laws so provide.

**§ 760. Proxies**

**SOURCE:**

Derived from Corp. Code §§ 2225-2228 (business and nonprofit corporations)\*

**§ 2225. Proxies; fiduciaries.** Every person entitled to vote or execute consents may do so either in person or by one or more agents authorized by a written proxy executed by the person or his duly authorized agent and filed with the secretary of the corporation.

Any executor, administrator, guardian, trustee, or other fiduciary may give proxies.

**§ 2226. Duration of proxy; revocation.** A proxy is not valid after the expiration of eleven (11) months from the date of its execution unless the person executing it specifies therein the length of time for which it is to continue in force, which in no case shall exceed seven (7) years from the date of its execution. Any proxy duly executed is not revoked, and continues in full force and effect, until an instrument revoking it, or a duly executed proxy bearing a later date, is filed with the secretary of the corporation.

**§ 2227. Death or incapacity of maker.** A proxy is not revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, written notice of the death or incapacity is given to the corporation.

**§ 2228. Suspension of proxy when maker personally present at meeting; proxy coupled with interest.** Notwithstanding that a valid proxy is outstanding, the powers of the proxy holder are suspended, except in the case of a proxy coupled with an interest, which states that fact on its face, if the person executing the proxy is present at the meeting and elects to vote in person.

**COMPARABLE PROVISIONS:**

N.Y. Not-for-Profit Corporation Law § 609; Pa. Corporation Not-for-profit Code § 7759\*; ABA-ALI Model Non-Profit Corporation Act § 15

**§ 7759. Voting and other action by proxy**

(a) **General rule.**—Voting by members of a nonprofit corporation shall be only in person unless a bylaw adopted by the members provides for voting by proxy. The presence of or vote or other action at a meeting of members, or the expression of consent or dissent to corporate action in writing, by a proxy of a member pursuant to such a bylaw shall constitute the presence of, or vote or action by, or written consent or dissent of such member for the purposes of this article.

(b) **Minimum requirements.**—Every proxy shall be executed in writing by the member or by his duly authorized attorney in fact and filed with the secretary of the corporation. A proxy shall be revocable at will, notwithstanding any other agreement or any provision in the proxy to the contrary, but the revocation of a proxy shall not be effective until notice thereof has been given to the secretary of the corporation. No unrevoked proxy shall be valid after 11 months from the date of its execution unless a longer time is expressly provided therein, but in no event shall a proxy be voted on after three years from the date of its execution. A proxy shall not be revoked by the death or incapacity of the maker unless before the vote is counted or the authority is exercised, written notice of such death or incapacity is given to the secretary of the corporation.

**§ 761. Vote sufficient for particular actions**

**SOURCE:**

Derived from N.Y. Not-for-Profit Corporation Law § 613\*

**§ 613. Vote of members**

(a) Except as otherwise required by this chapter or by the certificate of incorporation or the by-laws as permitted by this chapter, directors shall be elected by a plurality of the votes cast at a meeting of members by the members entitled to vote in the election.

(b) Whenever any corporate action, other than the election of directors, is to be taken under this chapter by vote of the members, it shall, except as otherwise required by this chapter or by the certificate of incorporation or by by-laws as permitted by this chapter, be authorized by a majority of the votes cast at a meeting of members by the members entitled to vote thereon.

(c) Except as provided in paragraph (b), any reference in this chapter to corporate action at a meeting of members by "majority vote" or "two-thirds vote" shall require the action to be taken by such proportion of the votes cast at such meeting, provided that the affirmative votes cast in favor of any such action shall be at least equal to the quorum. Blank votes or abstentions shall not be counted in the number of votes cast.

COMPARABLE PROVISIONS:  
Pa. Corporation Not-for-profit Code § 7757

§ 762. Inspectors

SOURCE:  
Derived from Corp. Code § 2232 (business and nonprofit corporations)\*

**§ 2232.** Inspectors of election; appointment; vacancy. In advance of any meeting of shareholders the board of directors may appoint inspectors of election to act at the meeting or any adjournment thereof.

If inspectors of election are not so appointed, the chairman of any meeting of shareholders may, and on the request of any shareholder or his proxy shall, appoint inspectors of election at the meeting.

The number of inspectors shall be either one or three. If appointed at a meeting on the request of one or more shareholders or proxies, the majority of shares present shall determine whether one or three inspectors are to be appointed.

In case any person appointed as inspector fails to appear or fails or refuses to act, the vacancy may be filled by appointment made by the board of directors in advance of the convening of the meeting, or at the meeting by the person acting as chairman.

COMPARABLE PROVISIONS:  
N.Y. Not-for-profit Corporation Law § 610\*; Pa. Corporation Not-for-profit Code § 7762

**§ 610.** Selection of inspectors at meetings of members; duties

(a) If the by-laws require inspectors at any meeting of members, such requirement is waived unless compliance therewith is requested by a member present in person or by proxy and entitled to vote at such meeting. Unless otherwise provided in the by-laws, the board, in advance of any meeting of members, may appoint one or more inspectors to act at the meeting or any adjournment thereof. If inspectors are not so appointed, the person presiding at a meeting of members may, and on the request of any member entitled to vote thereat shall, appoint one or more inspectors. In case any person appointed fails to appear or act, the vacancy may be filled by appointment made by the board in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability.

(b) The inspectors shall determine the number of membership certificates or cards and capital certificates outstanding



and the voting power of each, the certificates and cards represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges, and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all members. On request of the person presiding at the meeting or any members entitled to vote thereat, the inspectors shall make a report in writing of any challenge, question or matter determined by them and execute a certificate of any fact found by them. Any report or certificate made by them shall be prima facie evidence of the facts stated and of the vote as certified by them.

§ 763. Duties of inspectors

SOURCE:

Corp. Code § 2233 (business and nonprofit corporations) (same in substance)\*

§ 2233. Duties of inspectors; report and certificate. The inspectors of election shall determine the number of ~~shares, outstanding~~ and the voting power of each, the ~~shares, represented at the meeting,~~ the existence of a quorum, the authenticity, validity, and effect of proxies, receive votes, ballots, or consents, hear and determine all challenges and questions in any way arising in connection with the right to vote, count and tabulate all votes or consents, determine the result, and do such acts as may be proper to conduct the election or vote with fairness to all ~~shareholders~~ members.

memberships

The inspectors of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. If there are three inspectors of election the decision, act, or certificate of a majority is effective in all respects as the decision, act, or certificate of all.

TO BE ADDED

person presiding at

On request of the ~~chairman of,~~ the meeting or of any ~~shareholder~~ member or his proxy the inspectors shall make a report in writing of any challenge or question or matter determined by them and execute a certificate of any fact found by them. Any report or certificate made by them is prima facie evidence of the facts stated therein.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 610(b); Pa. Corporation Not-for-profit Code § 7762

**§ 764. Consent to action without a meeting.**

**SOURCE:**

Derived from Corp. Code § 2239 (business and nonprofit corporations)\*

**§ 2239. Consent to action without a meeting.**

Any action which, under any provision of this division, may be taken at a meeting of the shareholders, \* \* \* may be taken without a meeting if authorized by a writing signed by all of the persons who would be entitled to vote upon such action at a meeting, and filed with the Secretary of the corporation.

**COMPARABLE PROVISIONS:**

N.Y. Not-for-Profit Corporation Law § 614\*; Pa. Corporation Not-for-profit Code § 7763; ABA-ALI Model Non-Profit Corporation Act § 95

**§ 614. Action by members without a meeting**

(a) Whenever, under this chapter, members are required or permitted to take any action by vote, such action may be taken without a meeting on written consent, setting forth the action so taken, signed by all of the members entitled to vote thereon. This paragraph shall not be construed to alter or modify any provision in a certificate of incorporation not inconsistent with this chapter under which the written consent of less than all of the members is sufficient for corporate action.

(b) Written consent thus given by all members entitled to vote shall have the same effect as a unanimous vote of members and any certificate with respect to the authorization or taking of any such action which is delivered to the department of state shall recite that the authorization was by unanimous written consent.

(c) When there are no members of record, such action may be taken on the written consent signed by a majority in interest of the subscribers for capital certificates whose subscriptions have been accepted or their successors in interest or, if no subscription has been accepted, on the written consent signed by the incorporator or a majority of the incorporators. When there are two or more incorporators, if any dies or is for any reason unable to act, the other or others may act. If there is no incorporator able to act, any person for whom an incorporator was acting as agent may act in his stead, or if such other person also dies or is for any reason unable to act, his legal representative may act.

§ 765. Agreements as to voting

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 619\*

**§ 619. Agreements by members as to voting**

An agreement between two or more members, if in writing and signed by the parties thereto, may provide that in exercising their voting rights as members they shall vote as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them.

COMPARABLE PROVISIONS:

Corp. Code §§ 2230, 2231 (business corporation)

§ 766. Judicial relief

SOURCE:

Incorporates by reference Corp. Code §§ 2236-2238\*

**§ 2236. Action to determine validity of election or appointment of director; venue.** Upon the filing of an action therefor by any shareholder, the superior court shall try and determine the validity of any election or appointment of any director of any domestic corporation, or of any foreign corporation if the election was held or the appointment was made in this State. In the case of a domestic corporation the action shall be brought in the county in which the principal office of the corporation is located. In the case of a foreign corporation the action shall be brought in the county in which the corporation has its principal office in this State or in which the election was held or the appointment was made.

**§ 2237. Order for hearing; service of notice and complaint.** Upon the filing of the complaint, and before any further proceedings are had, the court shall enter an order fixing a date for the hearing, which shall be within five days unless for good cause a later date is fixed, and requiring notice of the date for the hearing and a copy of the complaint to be served upon the corporation and upon the person whose purported election or appointment is questioned and upon any person (other than the plaintiff) whom the plaintiff alleges to have been elected or appointed, in the manner in which a summons is required to be served, or if the court so directs, by registered mail; and the court may make such further requirements as to notice as appear to be proper under the circumstances.

**§ 2238. Judicial relief; authority of court.** The court may determine the person entitled to the office of director or may order a new election to be held or appointment to be made, and direct such other relief as may be just and proper.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 618\*

**§ 618. Power of supreme court respecting elections**

Upon the petition of any member aggrieved by an election and upon notice to the persons declared elected thereat, the corporation and such other persons as the court may direct, the supreme court at a special term held within the judicial district where the office of the corporation is located shall forthwith hear the proofs and allegations of the parties, and confirm the election, order a new election, or take such other action as justice may require.

**Article 3. Members' Derivative Action**

**§ 775. Right to bring a derivative action**

**SOURCE:**

Derived from N.Y. Not-for-Profit Corporation Law § 623\*

**§ 623. Members' derivative action brought in the right of the corporation to procure a judgment in its favor**

(a) An action may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor by five percent or more of any class of members or by such percentage of the holders of capital certificates or of the owners of a beneficial interest in the capital certificates of such corporation.

(b) In any such action, it shall be made to appear that each plaintiff is such a member, holder or owner at the time of bringing the action.

(c) In any such action, the complaint shall set forth with particularity the efforts of the plaintiff or plaintiffs to secure the initiation of such action by the board of directors and the reason for not making such effort.

(d) Such action shall not be discontinued, compromised or settled without the approval of the court having jurisdiction of the action. If the court shall determine that the interests of the members or of any class or classes thereof will be substantially affected by such discontinuance, compromise or settlement, the court, in its discretion, may direct that notice, by publication or otherwise, shall be given to the members or class or classes thereof whose interests it determines will be so affected; if notice is so directed to be given, the court may determine which one or more of the parties to the action shall bear the expense of giving the same, in such amount as the court shall determine and find to be reasonable in the circumstances, and the amount of such expense shall be awarded as special costs of the action and recoverable in the same manner as statutory taxable costs.

(e) If the action on behalf of the corporation was successful, in whole or in part, or if anything was received by the plaintiff or plaintiffs or a claimant or claimants as the result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff or plaintiffs, claimant or claimants, reasonable expenses, including reasonable attorney's fees, and shall direct him or them to account to the corporation for the remainder of the proceeds so received by him or them. This paragraph shall not apply to any judgment rendered for the benefit of injured members or non-record owners only and limited to a recovery of the loss or damage sustained by them.

COMPARABLE PROVISIONS:

Pa. Corporation Not-for-profit Code § 7765; Corp. Code § 834  
(business and nonprofit corporations)

§ 776. Allegations of complaint

SOURCE:

Derived from Corp. Code § 834(a)(business and nonprofit corporations)\*

834. (a) No action may be instituted or maintained in right of any unincorporated association or of any domestic or foreign corporation by a member of such association or by the holder or holders of shares, or of voting trust certificates representing shares, of such corporation unless both of the following conditions exist:

(1) The plaintiff alleges in the complaint that he was a member, registered shareholder or the holder of voting trust certificates at the time of the transaction or any part thereof of which he complains or that his membership, shares or voting trust certificates thereafter devolved upon him by operation of law from a holder who was a holder at the time of the transaction or any part thereof complained of.

(2) The plaintiff alleges in the complaint with particularity his efforts to secure from the board of directors such action as he desires and alleges further that he has either informed the corporation or such board of directors in writing of the ultimate facts of each cause of action against each defendant director or delivered to the corporation or such board of directors a true copy of the complaint which he proposes to file, and the reasons for his failure to obtain such action or the reasons for not making such effort.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 623; Pa. Corporation Not-for-profit Code § 7765

§ 777. Court approval required to discontinue or settle

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 623(d)\*

(d) Such action shall not be discontinued, compromised or settled without the approval of the court having jurisdiction of the action. If the court shall determine that the interests of the members or of any class or classes thereof will be substantially affected by such discontinuance, compromise or settlement, the court, in its discretion, may direct that notice, by publication or otherwise, shall be given to the members or class or classes thereof whose interests it determines will be so affected; if notice is so directed to be given, the court may determine which one or more of the parties to the action shall bear the expense of giving the same, in such amount as the court shall determine and find to be reasonable in the circumstances, and the amount of such expense shall be awarded as special costs of the action and recoverable in the same manner as statutory taxable costs.

**§ 778. Prevailing plaintiffs' expenses**

**SOURCE:**

New

**COMPARABLE PROVISIONS:**

N.Y. Not-for-Profit Corporation Law § 623(e)\*

(e) If the action on behalf of the corporation was successful, in whole or in part, or if anything was received by the plaintiff or plaintiffs or a claimant or claimants as the result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff or plaintiffs, claimant or claimants, reasonable expenses, including reasonable attorney's fees, and shall direct him or them to account to the corporation for the remainder of the proceeds so received by him or them. This paragraph shall not apply to any judgment rendered for the benefit of injured members or non-record owners only and limited to a recovery of the loss or damage sustained by them.

**§ 779. Prevailing defendants' expenses**

**SOURCE:**

New

**COMPARABLE PROVISIONS:**

Corp. Code § 834(b)(business and nonprofit corporations)\*;

Pa. Corporation Not-for-profit Code § 7765(c)

(b) In any such action, at any time within 30 days after service of summons upon the corporation or any defendant who is an officer or director of the corporation, or held such office at the time of the acts complained of, the corporation or such defendant may move the court for an order, upon notice and hearing, requiring the plaintiff to furnish security as hereinafter provided. Such motion shall be based upon one or more of the following grounds:

(1) That there is no reasonable possibility that the prosecution of the cause of action alleged in the complaint against the moving party will benefit the corporation or its security holders;

(2) That the moving party, if other than the corporation, did not participate in the transaction complained of in any capacity.

The court on application of the corporation or any defendant may, for good cause shown, extend such 30-day period for an additional period or periods not exceeding 60 days.

At the hearing upon such motion, the court shall consider such evidence, written or oral, by witnesses or affidavit, as may be material: (a) to the ground or grounds upon which the motion is based, or (b) to a determination of the probable reasonable expenses, including attorney's fees, of the corporation and the moving party which will be incurred in the defense of the action. If the court determines, after hearing the evidence adduced by the parties at the hearing, that the moving party has established a probability in support of any of the grounds upon which the motion is based, the court shall fix the nature and amount of security, not to exceed twenty-five thousand dollars (\$25,000), to be furnished by the plaintiff for reasonable expenses, including attorney's fees, which may be incurred by the moving party and the corporation in connection with such action, including expenses for which said corporation may become liable pursuant to Section 830. A determination by the court that security either shall or shall not be

furnished or shall be furnished as to one or more defendants and not as to others, shall not be deemed a determination of any one or more issues in the action or of the merits thereof. The corporation and the moving party shall have recourse to such security in such amount as the court shall determine upon the termination of such action. The amount of such security may thereafter from time to time be increased or decreased in the discretion of the court upon showing that the security provided has or may become inadequate or is excessive, but such order shall not increase the total amount of such security beyond twenty-five thousand dollars (\$25,000). If the court, upon any such motion, makes a determination that security shall be furnished by the plaintiff as to any one or more defendants, the action shall be dismissed as to such defendant or defendants, unless the security required by the court shall have been furnished within such reasonable time as may be fixed by the court.

If the plaintiff in any such action shall, either before or after a motion is made pursuant to this subdivision, or any order or determination pursuant to such motion, post good and sufficient bond or bonds in the aggregate amount of twenty-five thousand dollars (\$25,000) to secure the reasonable expenses of the parties entitled to make such motion, such plaintiff or plaintiffs shall be deemed to have fully complied with the requirements of this subdivision and with any order for security theretofore made pursuant hereto, any such motion then pending shall be deemed disposed of, and no further or additional bond or other security shall be required.

#### CHAPTER 4. MANAGEMENT

##### Article 1. Directors and Officers Generally

##### § 801. Board of directors; title of the board and member of board

###### SOURCE:

Subdivision (a) is substantially the same as part of Corp. Code § 9500 (nonprofit corporation)\*; subdivision (b) is derived from part of Corp. Code § 9300 (nonprofit corporation)\*

A nonprofit corporation shall have a board of directors and, except

§ 9500. Board of directors; powers; number. Except as otherwise provided by the articles of incorporation or the by-laws, the powers of a nonprofit corporation shall be exercised, its property controlled, and its affairs conducted by a board of not less than three directors the board of directors.

or this code.

9300. The articles of incorporation shall set forth:  
(a) The name of the corporation.  
(b) The specific and primary purposes for which it is formed. This requirement shall not be deemed to preclude a statement of general purposes or powers or to restrict the right of the corporation to engage in any other lawful activity.  
(c) That the corporation is organized pursuant to the General Nonprofit Corporation Law or pursuant to Part 1 of Division 2 of Title 1 of the Corporations Code.  
(d) The county in this state where the principal office for the transaction of the business of the corporation is located.

(e) The names and addresses of three or more persons who are to act in the capacity of directors until the selection of their successors. These persons may be given such titles as are deemed appropriate, but they shall be subject to all laws of this state relating to directors except as otherwise provided in this part. The number of persons so named constitutes the number of directors of the corporation, until changed by an amendment to the articles or, unless the articles otherwise provide, by a bylaw adopted by the members. However, the articles or, unless the articles provide otherwise, a bylaw duly adopted by the members, may state that the number of directors shall be not less than a stated minimum (which in no case shall be less than five) nor more than a stated maximum (which in no case shall exceed such stated minimum by more than three); and in the event that the articles or bylaws permit such an indefinite number of directors, the exact number of directors shall be fixed, within the limits specified in the articles or bylaws, by a bylaw or amendment thereof duly adopted by the members or by the board of directors. In the event the articles provide for an indefinite number of directors, unless the articles provide otherwise, such indefinite number may be changed, or a definite number fixed without provision for an indefinite number, by a bylaw duly adopted by the members.

(f) If an existing unincorporated association is being incorporated, the name of the existing unincorporated association.

#### COMPARABLE PROVISIONS:

Corp. Code § 800 (business corporation); N.Y. Not-for-Profit Corporation Law § 701; Pa. Corporation Not-for-profit Code §§ 7721, 7103. ("other body"); ABA-ALI Model Non-Profit Corporation Act § 17\*

#### § 7721. Management by board of directors

Unless otherwise provided in a bylaw adopted by the members, the business and affairs of every nonprofit corporation shall be managed by a board of directors. If any such provision is made in the bylaws, the powers and duties conferred or imposed upon the board of directors by this subchapter shall be exercised or performed to such extent and by such other body as shall be provided in the bylaws.

#### § 7103. Definitions

\* \* \* \* \*

"Other body." A term employed in this part to denote a person or group, other than the board of directors or a committee thereof, who pursuant to authority expressly conferred by this part may be vested by the bylaws of the corporation with powers which, if not vested by the bylaws in such person or group, would by this part be required to be exercised by either:

- (1) the membership of a corporation taken as a whole;



- (2) a convention or assembly of delegates of members established pursuant to any provision of this part; or
- (3) the board of directors.

Except as otherwise provided in this part a corporation may establish distinct persons or groups to exercise different powers which this part authorizes a corporation to vest in an other body.

**§ 802. Number of directors**

**SOURCE:**  
 Derived from Corp. Code §§ 9300(e), 9401(c), 9500, 10201(d)  
 (nonprofit corporation)\*

**9300. Required provisions**

\* \* \* \* \*

(c) The names and addresses of three or more persons who are to act in the capacity of directors until the selection of their successors. These persons may be given such titles as are deemed appropriate, but they shall be subject to all laws of this state relating to directors except as otherwise provided in this part. The number of persons so named constitutes the number of directors of the corporation, until changed by an amendment to the articles or, unless the articles otherwise provide, by a bylaw adopted by the members. However, the articles or, unless the articles provide otherwise, a bylaw duly adopted by the members, may state that the number of directors shall be not less than a stated minimum (which in no case shall be less than five) nor more than a stated maximum (which in no case shall exceed such stated minimum by more than three); and in the event that the articles or bylaws permit such an indefinite number of directors, the exact number of directors shall be fixed, within the limits specified in the articles or bylaws, by a bylaw or amendment thereof duly adopted by the members or by the board of directors. In the event the articles provide for an indefinite number of directors, unless the articles provide otherwise, such indefinite number may be changed, or a definite number fixed without provision for an indefinite number, by a bylaw duly adopted by the members.

**§ 9401. Permissible provisions.**

\* \* \* \* \*

(c) Subject to any provisions in the articles, the number, time and manner of choosing, qualifications, terms of office, official designations, powers, duties, and compensation of the directors and other officers.

**§ 9500. Board of directors; powers; number.** Except as otherwise provided by the articles of incorporation or the by-laws, the powers of a nonprofit corporation shall be exercised, its property controlled, and its affairs conducted by a board of not less than three directors.

**§ 10201. Articles; required provisions.**

\* \* \* \* \*

(d) The number of trustees, which shall be not less than 9 nor more than 25; their terms of office, which shall not exceed six years; and how they are to be chosen.

**COMPARABLE PROVISIONS:**

Corp. Code § 301 (business corporation); N.Y. Not-for-Profit Corporation Law § 702; Pa. Corporation Not-for-profit Code § 7723; ABA-ALI Model Non-Profit Corporation Act § 18

**§ 803. Changing number of directors**

**SOURCE:**

Derived from N.Y. Not-for-Profit Corporation Law § 702\*

**§ 702. Number of directors**

(a) The number of directors constituting the entire board shall be not less than three. Subject to such limitation, such number may be fixed by the by-laws or, in the case of a corporation having members, by action of the members or of the board under the specific provisions of a by-law adopted by the members. If not otherwise fixed under this paragraph, the number shall be three. As used in this article, "entire board" means the total number of directors entitled to vote which the corporation would have if there were no vacancies.

(b) The number of directors may be increased or decreased by amendment of the by-laws or, in the case of a corporation having members, by action of the members, or of the board under the specific provisions of a by-law adopted by the members, subject to the following limitations:

(1) If the board is authorized by the by-laws to change the number of directors, whether by amending the by-laws or by taking action under the specific provisions of a by-law adopted by the members, such amendment or action shall require the vote of a majority of the entire board.

(2) No decrease shall shorten the term of any incumbent director.

**COMPARABLE PROVISIONS:**

Corp. Code §§ 9300, 9400 (nonprofit corporation); 301, 501 (business corporation); ABA-ALI Model Non-Profit Corporation Act § 18

§ 804. Qualifications for directors

SOURCE:

Derived in part from Pa. Corporation Not-for-profit Code § 7722\*

§ 7722. Qualifications of directors

Each director shall be a natural person of full age who, unless otherwise restricted in the bylaws, need not be a resident of this Commonwealth or a member of the corporation. Except as otherwise provided in this section, the qualifications of directors may be prescribed in the bylaws.

COMPARABLE PROVISIONS:

Corp. Code §§ 9401(c) (nonprofit corporation)\*; 804 (business corporation); N.Y. Not-for-Profit Corporation Law § 701; ABA-ALI Model Non-Profit Corporation Act § 17

§ 9401. Permissible provisions.

\* \* \* \* \*

(c) Subject to any provisions in the articles, the number, time and manner of choosing, qualifications, terms of office, official designations, powers, duties, and compensation of the directors and other officers.

§ 805. Term of directors

SOURCE:

Derived from Corp. Code § 805 (business corporation)\*; Pa. Corporation Not-for-profit Code § 7724\*

§ 805. Terms of office of directors. Directors named in the articles shall hold office until the next annual meeting of shareholders and until their successors are elected, either at an annual or a special meeting of shareholders. Directors, other than those named in the articles, shall hold office until the next annual meeting, unless the articles provide for a shorter term, and until their successors are elected.

§ 7724. Term of office of directors

Each director shall hold office until the expiration of the term for which he was selected and until his successor has been selected and qualified or until his earlier death, resignation or removal. Directors, other than those selected by virtue of their office or former office in the corporation or in any other entity or organization, shall be selected for the term of office provided in the bylaws. In the absence of a provision fixing the term, it shall be one year.

**COMPARABLE PROVISIONS:**

Corp. Code § 9401(c) (nonprofit corporation)\*; N.Y. Not-for-Profit Corporation Law § 703; ABA-ALI Model Non-Profit Corporation Act § 18

**§ 9401. Permissible provisions.**

\* \* \* \* \*

(c) Subject to any provisions in the articles, the number, time and manner of choosing, qualifications, terms of office, official designations, powers, duties, and compensation of the directors and other officers.

**§ 806. Election of directors**

**SOURCE:**

New

**COMPARABLE PROVISIONS:**

Corp. Code §§ 2201\*, 10202\*; N.Y. Not-for-Profit Corporation Law § 703\*; Pa. Corporation Not-for-profit Code § 7725; ABA-ALI Model Non-Profit Corporation Act § 18

**§ 2201. Business of annual meeting; proposals requiring special notice.** At the annual meeting directors shall be elected, reports of the affairs of the corporation shall be considered, and any other business may be transacted which is within the powers of the shareholders, except that action shall not be taken on any of the following proposals unless written notice of the general nature of the business or proposal has been given as in case of a special meeting, even though notice of regular or annual meetings is otherwise dispensed with:

(a) A proposal to sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of the property or assets of the corporation except under Section 3900.

(b) A proposal to merge or consolidate with another corporation, domestic or foreign.

(c) A proposal to reduce the stated capital of the corporation.

(d) A proposal to amend the articles, except to extend the term of the corporate existence.

(e) A proposal to wind up and dissolve the corporation.

(f) A proposal to adopt a plan of distribution of shares, securities, or any consideration other than money in the process of winding up.

**§ 10202. Selection of trustees.** The articles of incorporation may provide that some or all of the trustees be chosen by specified associations or corporations, or by officers thereof, and by public officials.

**§ 703. Election and term of office of directors; alternates**

(a) A corporation may provide in its certificate of incorporation or by-laws for directors to be elected or appointed at large, or by special districts or membership sections, or by virtue of their office or former office in the corporation or other entity, public or private, or by bondholders pursuant to paragraph (c) of section 506 (Bonds and security interests) voting as a class, or any combination thereof.

(b) Directors shall be elected or appointed in the manner and for the term of office provided in the certificate of incorporation or the by-laws. The term of office of directors, other than those elected or appointed by virtue of their office or former office in the corporation or other entity, public or private, shall not exceed five years; and, if the board is classified under section 704 (Classification of directors), such term shall not exceed a number of years equal to the number of classes into which the board is classified. In the absence of a provision fixing the term, it shall be one year.

(c) Each director shall hold office until the expiration of the term for which he is elected or appointed, and until his successor has been elected or appointed and qualified.

(d) If the certificate of incorporation or by-laws so provide, a special district or membership section entitled to elect or appoint one or more directors may elect or appoint an alternate for each such director. In the absence of a director from a meeting of the board, his alternate may, upon written notice to the secretary of the corporation, attend such meeting and exercise therein the rights, powers, and privileges of the absent director. When so exercising the rights, powers, and privileges of the absent director, such alternate shall be subject in all respects to the provisions of this chapter governing directors.

**§ 807. Vacancies**

**SOURCE:**

Derived from Corp. Code §§ 9502 (nonprofit corporation)\*, 809.5 (business and nonprofit corporations)\*; Pa. Corporation Not-for-profit Code § 7725(c)\*

**§ 9502. Filling vacancy in board.** Unless otherwise provided in the articles or by-laws, any vacancy in the board of directors caused by death, resignation, or any disability shall be filled by a majority of the remaining members thereof, although less than a quorum and each person so selected shall be a director to serve for the balance of the unexpired term of his predecessor in office unless otherwise restricted in the articles or bylaws.

of the board

**§ 809.5 Filling of vacancy by court**

~~If a corporation has not issued shares and all the directors resign, die or become incompetent, or in the case of a nonstock corporation if a corporation has no members other than the directors and all the directors resign, die or become incompetent,~~ the superior court of the county in which the principal office of the corporation is or was located may appoint directors of the corporation, upon petition of a creditor of the corporation or of the personal representative of a deceased director or of the guardian or conservator of an incompetent director. A director so

appointed need not be a member of the corporation.

**§ 7725. Selection of directors**

\* \* \* \* \*

(c) Vacancies.—Except as otherwise provided in the bylaws, vacancies in the board of directors, including vacancies resulting from an increase in the number of directors, shall be filled by a majority of the remaining members of the board though less than a quorum, and each person so elected shall be a director to serve for the balance of the unexpired term unless otherwise restricted in the bylaws.

**COMPARABLE PROVISIONS:**

N.Y. Not-for-Profit Corporation Law § 705; ABA-ALI Model Non-Profit Corporation Act § 19

**§ 808. Removal of directors**

**SOURCE:**

Subdivision (a) is substantially the same as Corp. Code § 810 (business and nonprofit corporations)\*; subdivision (b) is derived from Corp. Code § 811 (business and nonprofit corporations)\*; subdivision (c) is new.

**§ 810. Removal of board or director by shareholders; required vote; election of new director at same meeting.** The entire board of directors or any individual director may be removed from office by a vote of ~~shareholders holding a majority of the outstanding shares entitled to vote at an election of directors.~~

However, unless the entire board is removed, an individual director shall not be removed if the number of shares voted against the resolution for his removal exceeds the quotient arrived at when the total number of outstanding shares entitled to vote is divided by one plus the authorized number of directors. If any or all directors are so removed, new directors may be elected at the same meeting. Whenever a class or series of shares is entitled to elect one or more directors under authority granted by the articles, the provisions of this paragraph apply to the vote of that class or series and not to the vote of the outstanding shares as a whole.

a majority  
of the  
members

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**§ 811. Action to remove director; grounds for removal.** The superior court of the county where the principal office is located may, at the suit of shareholders holding at least 10 percent of the number of outstanding shares with or without voting rights, remove from office any director in case of fraudulent or dishonest acts or gross abuse of authority or discretion with reference to the corporation, and may bar from reelection any director so removed for a period prescribed by the court. The corporation shall be made a party to such actions.

**COMPARABLE PROVISIONS:**

N.Y. Not-for-Profit Corporation Law § 706\*; Pa. Corporation  
Not-for-profit Code § 7726

**§ 706. Removal of directors**

(a) Except as limited in paragraph (c), any or all of the directors may be removed for cause by vote of the members, or by vote of the directors provided there is a quorum of not less than a majority present at the meeting of directors at which such action is taken.

(b) Except as limited in paragraph (c), if the certificate of incorporation or the by-laws so provide, any or all of the directors may be removed without cause by vote of the members.

(c) The removal of directors, with or without cause, as provided in paragraphs (a) and (b) is subject to the following:

(1) In the case of a corporation having cumulative voting, no director may be removed when the votes cast against his removal would be sufficient to elect him if voted cumulatively at an election at which the same total number of votes were cast and the entire board, or the entire class of directors of which he is a member, were then being elected; and

(2) When by the provisions of the certificate of incorporation or the by-laws the members of any class or group, or the holders of bonds, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members of that class or group, or the holders of such bonds, voting as a class.

(d) An action to procure a judgment removing a director for cause may be brought by the attorney-general or by ten percent of the members whether or not entitled to vote. The court may bar from re-election any director so removed for a period fixed by the court.

**§ 809. Meetings of board; call**

**SOURCE:**

Derived from Corp. Code § 812 (business and nonprofit corporations)\*

**§ 812. Meetings of board; call.** Unless the by-laws provide otherwise, all meetings of the board of directors of a corporation shall be called by the president, or, if he is absent or is unable or refuses to act, by any vice president or by any two directors.

**COMPARABLE PROVISIONS:**

Corp. Code § 9401(a) (nonprofit corporation)\*; N.Y. Not-for-Profit Corporation Law § 710

**§ 9401. Permissible provisions.**

\* \* \* \* \*

(a) The time, place, and manner of calling, giving notice of, and conducting regular and special meetings of members or directors, which may be held outside the State. The by-laws may dispense with notice of all regular members' and directors' meetings.

§ 810. Notice of meeting; adjourned meeting

SOURCE:

Corp. Code § 813 (business and nonprofit corporations) (same in substance)\*

§ 813. Notice of meeting; adjourned meeting. Except in the case of regular meetings notice of which has been dispensed with by the by-laws, written notice of the time and place of the meetings of the board of directors shall be delivered personally to each director, or sent to each director by mail or by other form of written communication, at least seven (7) days before the meeting unless the by-laws provide otherwise. If the address of a director is not shown on the records and is not readily ascertainable, notice shall be addressed to him at the city or place in which the meetings of the directors are regularly held. Notice of the time and place of holding an adjourned meeting of a meeting need not be given to absent directors if the time and place are fixed at the meeting adjourned.

articles or

articles or

COMPARABLE PROVISIONS:

Corp. Code § 9401(a) (nonprofit corporations)\*; N.Y. Not-for-Profit Corporation Law § 711\*; Pa. Corporation Not-for-profit Code § 7704; ABA-ALI Model Non-Profit Corporation Act § 22

§ 9401. Permissible provisions.

\* \* \* \* \*

(a) The time, place, and manner of calling, giving notice of, and conducting regular and special meetings of members or directors, which may be held outside the State. The by-laws may dispense with notice of all regular members' and directors' meetings.

§ 711. Notice of meetings of the board

(a) Unless otherwise provided by the by-laws, regular meetings of the board may be held without notice if the time and place of such meetings are fixed by the by-laws or the board. Special meetings of the board shall be held upon notice to the directors.

(b) The by-laws may prescribe what shall constitute notice of meeting of the board. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board, unless required by the by-laws.

(c) Notice of a meeting need not be given to any alternate director, nor to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him.

(d) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the by-laws so provide, notice of any adjournment of a meeting of the board to another time or place shall be given to the directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other directors.



§ 811. Validation of meeting defectively called or noticed

SOURCE:

Corp. Code § 814 (business and nonprofit corporations) (same in substance)\*

§ 814. Validation of meeting defectively called or noticed; waiver, consent, approval of minutes. The transactions of any meeting of the board of directors, however called and noticed or wherever held, are as valid as though ~~had at a meeting~~ duly held after regular call and notice, if a quorum is present and if, either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes thereof. All such waivers, consents, or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

transacted

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 711; Pa. Corporation Not-for-profit Code § 7706; ABA-ALI Model Non-Profit Corporation Act § 22

§ 812. Place of meeting

SOURCE:

Subdivision (a) is the same in substance as Corp. Code § 815 (business and nonprofit corporations)\*; subdivision (b) is new.

§ 815. Place of meeting. Regular meetings of the board of directors shall be held at any place within or without the State which has been designated by the by-laws or from time to time by resolution of the board or by written consent of all members of the board. In the absence of such designation regular meetings shall be held at the principal office of the corporation. Special meetings of the board may be held either at a place so designated or at the principal office. Any regular or special meeting is valid wherever held, if held upon written consent of all members of the board given either before or after the meeting and filed with the secretary of the corporation.

or similar officer

COMPARABLE PROVISIONS:

Corp. Code § 9401(a); N.Y. Not-for-Profit Corporation Law § 710; Pa. Corporation Not-for-profit Code § 7705; ABA-ALI Model Non-Profit Corporation Act § 22

§ 813. Quorum of board

SOURCE:

Corp. Code § 816 (business and nonprofit corporations)(same in substance)\*

816. A majority of the authorized number of directors constitutes a quorum of the board for the transaction of business, unless the articles or bylaws provide that a different number, which in no case shall be less than one-third the authorized number of directors, nor less than two, constitutes a quorum, unless the authorized number of directors is one, in which case one director constitutes a quorum.

(a) The  
(b) The

of the corporation's affairs

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 707; Pa. Corporation Not-for-profit Code § 7727; ABA-ALI Model Non-Profit Corporation Act § 20

§ 814. Effect of majority vote of quorum at board meeting; conference telephone

SOURCE:

Subdivision (a) is the same as Corp. Code § 817 (business and nonprofit corporations)\*; subdivision (b) is derived from Pa. Corporation Not-for-profit Code § 7709.\*

§ 817. Effect of majority vote of quorum at board meeting. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board of directors, unless the law, the articles, or the by-laws require a greater number.

§ 7709. Use of conference telephone and similar equipment

One or more persons may participate in a meeting of the board, or of an other body, or of the members by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 708; Pa. Corporation Not-for-profit Code § 7727; ABA-ALI Model Non-Profit Corporation Act § 20

§ 815. Adjournment of meeting for lack of quorum

SOURCE:

Corp. Code § 818 (business and nonprofit corporations)(same)\*

§ 818. Adjournment of meeting for lack of quorum. In the absence of a quorum a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the board.

§ 815.5. Provisional director

SOURCE:

Corp. Code § 819 (business and nonprofit corporations)(substantially the same)\*

§ 819. Provisional director

(a) If a corporation has an even number of directors who are equally divided and cannot agree as to the management of its affairs, so that its business cannot longer be conducted to advantage or so that there is danger that its property and business will be impaired and lost, the superior court of the county where the principal office of the corporation is located may, notwithstanding any provisions of the articles or bylaws of the corporation and whether or not an action is pending for an involuntary winding up or dissolution of the corporation, appoint a provisional director pursuant to this section.

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Action for such appointment may be filed by \* \* \* any director or by the holders of not less than 33 1/3 percent of the outstanding shares.

(b) The provisional director shall be an impartial person, who is neither a shareholder nor a creditor of the corporation, nor related by consanguinity or affinity within the third degree to any of the other directors of the corporation, or to any judge of the court by which he is appointed. The provisional director shall have all the rights and powers of a director, and shall be entitled to notice of the meetings of the board of directors and to vote at such meetings, until the deadlock in the board of directors is broken or until he is removed by order of the court or by vote or written consent of the holders of a majority of the voting shares. He shall be entitled to receive such compensation as may be agreed upon between him and the corporation, and in the absence of such agreement he shall be entitled to such compensation as shall be fixed by the court.

member

a majority of the members entitled to vote.

This section does not apply to corporations subject to the Banking Law, the Public Utilities Act, or the Savings and Loan Association Law.

§ 816. Action by board without meeting

SOURCE:

Corp. Code § 9503.1 (nonprofit corporation)(same in substance)\*

§ 9503.1 Action by board without meeting

If the articles of incorporation or bylaws so provide, any action required or permitted to be taken by the board of directors under any provision of this division may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to such action. ~~Such~~ written consent or consents shall be filed with the minutes of the proceedings of the board. Such action by written consent ~~shall have~~ the same force and effect as a unanimous vote of such directors. Any certificate or other document filed under any provision of this division which relates to action so taken shall state that the action was taken by unanimous written consent of the board of directors without a meeting, and that the articles of incorporation or bylaws, as the case may be, authorize the directors to so act, and such statement shall be prima facie evidence of such authority.

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§ 817. Duty to act in good faith with ordinary skill

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 717\*

§ 717. Duty of directors and officers

(a) Directors and officers shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions.

(b) In discharging their duties, directors and officers, when acting in good faith, may rely upon financial statements of the corporation represented to them to be correct by the president or the officer of the corporation having charge of its books of accounts, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation.

COMPARABLE PROVISIONS:

Corp. Code §§ 820, 829 (business and nonprofit corporations)\*

Pa. Corporation Not-for-profit Code § 7734

§ 820. Duty to act in good faith; effect of personal financial interest or common directorship. Directors and officers shall exercise their powers in good faith, and with a view to the interests of the corporation. No contract or other transaction between a corporation and one or more of its directors, or between a corporation and any corporation, firm, or association in which one or more of its directors are directors or are financially interested, is either void or voidable because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes or approves the contract or transaction, or because his or their votes are counted for such purpose, if the circumstances specified in any of the following subdivisions exist:

(a) The fact of the common directorship or financial interest is disclosed or known to the board of directors or committee and noted in the minutes, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such director or directors.

(b) The fact of the common directorship or financial interest is disclosed or known to the shareholders, and they approve or ratify the contract or transaction in good faith by a majority vote or written consent of shareholders entitled to vote.

(c) The contract or transaction is just and reasonable as to the corporation at the time it is authorized or approved.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies a contract or transaction.

§ 829. Effect of reliance on corporate financial statement

A director is not negligent within the meaning of section 823 if he relies and acts in good faith upon a balance sheet or profit and loss statement of the corporation furnished or exhibited to him by the president or the officer of the corporation having charge of or supervision of its accounts, or certified to be correct and according to the books of the corporation by a public accountant, certified public accountant, or firm of public accountants or of certified public accountants selected with reasonable care.

§ 818. Interested directors and officers; quorum

SOURCE:

Derived from Corp. Code § 820 (business and nonprofit corporations)\*

§ 820. Duty to act in good faith; effect of personal financial interest or common directorship. Directors and officers shall exercise their powers in good faith, and with a view to the interests of the corporation. No contract or other transaction between a corporation and one or more of its directors, or between a corporation and any corporation, firm, or association in which one or more of its directors are directors or are financially interested, is either void or voidable because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes or approves the contract or transaction, or because his or their votes are counted for such purpose, if the circumstances specified in any of the following subdivisions exist:

(a) The fact of the common directorship or financial interest is disclosed or known to the board of directors or committee and noted in the minutes, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such director or directors.

(b) The fact of the common directorship or financial interest is disclosed or known to the shareholders, and they approve or ratify the contract or transaction in good faith by a majority vote or written consent of shareholders entitled to vote.

(c) The contract or transaction is just and reasonable as to the corporation at the time it is authorized or approved.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies a contract or transaction.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 715\*; Pa. Corporation Not-for-profit Code § 7728

§ 715. Interested directors and officers

(a) No contract or other transaction between a corporation and one or more of its directors or officers, or between a corporation and any other corporation, firm, association or other entity in which one or more of its directors or officers are directors or officers, or have a substantial financial interest, shall be either void or voidable for this reason alone or by reason

alone that such director or directors or officer or officers are present at the meeting of the board, or of a committee thereof, which authorizes such contract or transaction, or that his or their votes are counted for such purpose:

(1) If the material facts as to such director's or officer's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the board or committee, and the board or committee authorizes such contract or transaction by a vote sufficient for such purpose without counting the vote or votes of such interested director or officer; or

(2) If the material facts as to such director's or officer's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the members entitled to vote thereon, if any, and such contract or transaction is authorized by vote of such members.

(b) If such good faith disclosure of the material facts as to the director's or officer's interest in the contract or transaction and as to any such common directorship, officership or financial interest, is made to the directors or members, or known to the board or committee or members authorizing such contract or transaction, as provided in paragraph (a), the contract or transaction may not be avoided by the corporation for the reasons set forth in paragraph (a). If there was no such disclosure or knowledge, or if the vote of such interested director or officer was necessary for the authorization of such contract or transaction at a meeting of the board or committee at which it was authorized, the corporation may avoid the contract or transaction unless the party or parties thereto shall establish affirmatively that the contract or transaction was fair and reasonable as to the corporation at the time it was authorized by the board, a committee or the members.

(c) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board or of a committee which authorizes such contract or transaction.

(d) The certificate of incorporation may contain additional restrictions on contracts or transactions between a corporation and its directors or officers or other persons and may provide that contracts or transactions in violation of such restrictions shall be void or voidable.

(e) Unless otherwise provided in the certificate of incorporation or the by-laws, the board shall have authority to fix the compensation of directors for services in any capacity.

(f) The fixing of salaries of officers, if not done in or pursuant to the by-laws, shall require the affirmative vote of a majority of the entire board unless a higher proportion is set by the certificate of incorporation or by-laws.

§ 819. Officers

SOURCE:

Subdivision (a) is new; subdivision (b) is derived from N.Y. Not-for-Profit Corporation Law § 713(e)\*

§ 713. Officers

(e) All officers as between themselves and the corporation shall have such authority and perform such duties in the management of the corporation as may be provided in the by-laws or, to the extent not so provided, by the board. The board may require any officer to give security for the faithful performance of his duties.

COMPARABLE PROVISIONS:

Corp. Code § 821 (business and nonprofit corporations)\*; Pa. Corporation Not-for-profit Code § 7732

§ 821. Corporate officers; selection; delegation of powers. Every corporation shall have a president, a vice president, a secretary, and a treasurer, who shall be chosen by the board of directors. A corporation may have such other officers as may be deemed expedient, who shall be chosen in such manner and hold their offices for such terms as may be prescribed by the by-laws. Any two or more offices, except those of president and secretary, may be held by the same person.

Any vice president, assistant treasurer, or assistant secretary, respectively, may exercise any of the powers of the president, the treasurer, or the secretary, respectively, as provided in the by-laws or directed by the board of directors, and shall perform such other duties as are imposed upon him by the by-laws or the board of directors.

§ 820. Removal of officers

SOURCE:

Subdivision (a) is derived from Pa. Corporation Not-for-profit Code § 7733\*; subdivision (b) is derived from N.Y. Not-for-Profit Corporation Law § 714(c)\*.

§ 7733. Removal of officers and agents

Unless otherwise provided in the bylaws any officer or agent may be removed by the board of directors or other body whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights of any person so removed.

**§ 714. Removal of officers**

\* \* \* \* \*

(c) An action to procure a judgment removing an officer for cause may be brought by the attorney-general, by any director, by ten percent of the members, whether or not entitled to vote, or by the holders of ten percent of the face value of the outstanding capital certificates, subvention certificates or bonds having voting rights. The court may bar from re-election or re-appointment any officer so removed for a period fixed by the court.

**COMPARABLE PROVISIONS:**

ABA-ALI Model Non-Profit Corporation Act § 24

**§ 821. Executive committees**

**SOURCE:**

Derived from N.Y. Not-for-Profit Corporation Law § 712\*

**§ 712. Executive committee and other committees**

(a) If the certificate of incorporation or the by-laws so provide, the board, by resolution adopted by a majority of the entire board, may designate from among its members an executive committee and other standing committees, each consisting of three or more directors, and each of which, to the extent provided in the resolution or in the certificate of incorporation or by-laws, shall have all the authority of the board, except that no such committee shall have authority as to the following matters:

(1) The submission to members of any action requiring members' approval under this chapter.

(2) The filling of vacancies in the board of directors or in any committee.

(3) The fixing of compensation of the directors for serving on the board or on any committee.

(4) The amendment or repeal of the by-laws or the adoption of new by-laws.

(5) The amendment or repeal of any resolution of the board which by its terms shall not be so amendable or repealable.

(b) The board may designate one or more directors as alternate members of any standing committee, who may replace any absent member or members at any meeting of such committee.

(c) The by-laws may provide for special committees of the board, or may authorize the board to create such special committees as may be deemed desirable. Unless otherwise provided in the by-laws, the members of such committees shall be appointed by the chairman of the board or the president of the corporation if there is no chairman of the board, with the consent



of the board. Special committees shall have only the powers specifically delegated to them by the board and in no case shall have powers which are not authorized for standing committees under this section.

(d) Each committee of the board shall serve at the pleasure of the board. The designation of any such committee and the delegation thereto of authority shall not alone relieve any director of his duty to the corporation under section 717 (Duty of directors and officers).

(e) Committees, other than standing or special committees of the board, whether created by the board or by the members, shall be committees of the corporation. Such committees may be elected or appointed in the same manner as officers of the corporation. Provisions of this chapter applicable to officers generally shall apply to members of such committees.

**COMPARABLE PROVISIONS:**

Corp. Code §§ 9401(d)(nonprofit corporation)\*, 822 (business and nonprofit corporations)\*; ABA-ALI Model Non-Profit Corporation Act § 21

**§ 9401. Permissible provisions.**

\* \* \* \* \*

(d) The appointment and authority of executive or other committees of the board of directors.

**§ 822. Executive and other committee of board; delegation of powers.** The by-laws may provide for the appointment by the board of directors of an executive committee and other committees and may authorize the board to delegate to the executive committee any of the powers and authority of the board in the management of the business and affairs of the corporation, except the power to declare dividends and to adopt, amend, or repeal by-laws. The executive committee shall be composed of two or more directors.

**§ 822. Loans to officers and directors**

**SOURCE:**

N.Y. Not-for-Profit Corporation Law § 716\*

**§ 716. Loans to directors and officers**

No loans, other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by a corporation to its directors or officers, or to any other corporation, firm, association or other entity in which one or more of its directors or officers are directors or officers or hold a substantial financial interest, except a loan by one type B corporation to another type B corporation. A loan made in violation of this section shall be a violation of the duty to the corporation of the directors or officers authorizing it or participating in it, but the obligation of the borrower with respect to the loan shall not be affected thereby.

**COMPARABLE PROVISIONS:**

Corp. Code § 823\*; AB4-A1 Model Non-Profit Corporation Act § 27

823. (a) A corporation shall not make any loan of money or property to or guarantee the obligation of (1) any director or officer of the corporation, any director or officer of any of its holding corporations or any director or officer of any of its subsidiary corporations, directly or indirectly, or (2) any person, upon the security of the shares of the corporation or the shares of any of its holding corporations or the shares of subsidiary corporations, except by the vote or written consent of the holders of two-thirds of the shares of all classes, regardless of limitations on voting rights, other than shares held by the benefited director, officer, or shareholder.

(b) If a loan or guaranty is made in violation of subdivision (a), the director or officers who authorize or assent to it are jointly and severally liable to the corporation as guarantors for the repayment or return of the sum or value loaned, with interest thereon at the rate of 6 percent a year until paid, or for any liability upon the guaranty.

Any officer or director held liable under this subdivision who satisfies any such liability is entitled to contribution from any other officer or director who participates in authorizing, making, or allowing the loan or guaranty, and shall be subrogated to any and all rights of the corporation against the borrower or principal obligor.

(c) The provisions of this section do not apply to banks, building and loan associations, industrial loan companies, or credit unions, or to loans made to, or for the benefit of, an employee for the purpose of paying premiums on a life insurance policy on the life of such employee, or to loans permitted under any statute regulating any special classes of corporations.

**§ 823. Action against directors and officers for misconduct**

**SOURCE:**

Derived from N.Y. Not-For-Profit Corporation Law § 720\*

**§ 720. Action against directors and officers for misconduct**

(a) An action may be brought against one or more directors or officers of a corporation to procure a judgment for the following relief:

(1) To compel the defendant to account for his official conduct in the following cases:

(A) The neglect of, or failure to perform, or other violation of his duties in the management and disposition of corporate assets committed to his charge.

(B) The acquisition by himself, transfer to others, loss or waste of corporate assets due to any neglect of, or failure to perform, or other violation of his duties.

(2) To set aside an unlawful conveyance, assignment or transfer of corporate assets, where the transferee knew of its unlawfulness.

(3) To enjoin a proposed unlawful conveyance, assignment or transfer of corporate assets, where there are reasonable grounds for belief that it will be made.

(b) An action may be brought for the relief provided in this section and in paragraph (a) of section 719 (liabilities of directors in certain cases) by the attorney general, by the corporation, or, in the right of the corporation, by any of the following:

(1) A director or officer of the corporation.

(2) A receiver, trustee in bankruptcy, or judgment creditor thereof.

(3) Under section 623 (Members' derivative action brought in the right of the corporation to procure a judgment in its favor), by one or more of the members thereof.

(4) If the certificate of incorporation or the by-laws so provide, by any holder of a subscription certificate or any other contributor to the corporation of cash or property of the value of \$1,000 or more.

(c) In a corporation having no members, an action may be brought by a director against third parties to obtain a judgment in favor of the corporation. The complaint shall set forth with particularity the efforts of the plaintiff to secure the initiation of such action by the board or the reason for not making such efforts. The court in its discretion shall determine whether it is in the interest of the corporation that the action be maintained, and if the action is successful in whole or in part, what reimbursement if any should be made out of the corporate treasury to the plaintiff for his reasonable expenses including attorney's fees, incurred in the prosecution of the action.

**COMPARABLE PROVISIONS:**

**Corp. Code § 826 (business corporation)\***

**§ 826. Actions to enforce liability and recover illegal payments.** Any one or more judgment creditors of the corporation whose debts or claims arose prior to the time of violation of Section 824 may sue the corporation and any or all of its directors in one action and recover judgment for the amount due them from the corporation against any or all of the directors guilty of the violation up to the amount of the unlawful dividends, purchase price, withdrawal, or other distribution. An action against such directors for any such violation may be brought by the corporation or by its receiver, liquidator, or trustee in bankruptcy, for the benefit of all such creditors, owners of shares, and shareholders, without the necessity of any prior judgment against the corporation, for the recovery of the amount of the unlawful dividends, purchase price, withdrawal, or other distribution as far as needed to satisfy such debts and liabilities and the full amount of loss sustained by such shareholders.

§ 824. Liability of directors

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 719\*

§ 719. Liability of directors in certain cases

(a) Directors of a corporation who vote for or concur in any of the following corporate actions shall be jointly and severally liable to the corporation for the benefit of its creditors or members or the ultimate beneficiaries of its activities, to the extent of any injury suffered by such persons, respectively, as a result of such action, or, if there be no creditors or members or ultimate beneficiaries so injured, to the corporation, to the extent of any injury suffered by the corporation as a result of such action:

(1) The distribution of the corporation's cash or property to members, directors or officers, other than a distribution permitted under section 515 (Dividends prohibited; certain distributions of cash or property authorized).

(2) The redemption of capital certificates, subvention certificates or bonds, to the extent such redemption is contrary to the provisions of section 502 (Member's capital contributions), section 504 (Subventions), or section 506 (Bonds and security interests).

(3) The payment of a fixed or contingent periodic sum to the holders of subvention certificates or of interest to the holders or beneficiaries of bonds to the extent such payment is contrary to the provisions of section 504 or section 506.

(4) The distribution of assets after dissolution of the corporation in violation of section 1005 (Procedure after dissolution) or without paying or adequately providing for all known liabilities of the corporation, excluding any claims not filed by creditors within the time limit set in a notice given to creditors under articles 10 (Non-judicial dissolution) or 11 (Judicial dissolution).

(5) The making of any loan contrary to section 716 (Loans to directors and officers).

(b) A director who is present at a meeting of the board, or any committee thereof, at which action specified in paragraph (a) is taken shall be presumed to have concurred in the action unless his dissent thereto shall be entered in the minutes of the meeting, or unless he shall submit his written dissent to the person acting as the secretary of the meeting before the adjournment thereof, or shall deliver or send by registered mail such dissent to the secretary of the corporation promptly after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action. A director who is absent from a meeting of the board, or any committee thereof, at which such action is taken shall be presumed to have concurred in the action unless he shall deliver or send by

registered mail his dissent thereto to the secretary of the corporation or shall cause such dissent to be filed with the minutes of the proceedings of the board or committee within a reasonable time after learning of such action.

(c) Any director against whom a claim is successfully asserted under this section shall be entitled to contribution from the other directors who voted for or concurred in the action upon which the claim is asserted.

(d) Directors against whom a claim is successfully asserted under this section shall be entitled, to the extent of the amounts paid by them to the corporation as a result of such claims:

(1) Upon reimbursement to the corporation of any amount of an improper distribution of the corporation's cash or property, to be subrogated to the rights of the corporation against members, directors or officers who received such distribution with knowledge of facts indicating that it was not authorized by this chapter, in proportion to the amounts received by them respectively.

(2) Upon reimbursement to the corporation of an amount representing an improper redemption of a capital certificate, subvention or bond, to have the corporation rescind such improper redemption and recover the amount paid, for their benefit but at their expense, from any member or holder who received such payment with knowledge of facts indicating that such redemption by the corporation was not authorized by this chapter.

(3) Upon reimbursement to the corporation of an amount representing all or part of an improper payment of a fixed or contingent periodic sum to the holder of a subvention certificate, or of interest to the holder or beneficiary of a bond, to have the corporation recover the amount so paid, for their benefit but at their expense, from any holder or beneficiary who received such payment with knowledge of facts indicating that such payment by the corporation was not authorized by this chapter.

(4) Upon payment to the corporation of the claim of the attorney general or of any creditor by reason of a violation of subparagraph (a) (4), to be subrogated to the rights of the corporation against any person who received an improper distribution of assets.

(5) Upon reimbursement to the corporation of the amount of any loan made contrary to section 716 (Loans to directors and officers), to be subrogated to the rights of the corporation against a director or officer who received the improper loan.

(e) A director or officer shall not be liable under this section if, in the circumstances, he discharged his duty to the corporation under section 717 (Duty of directors and officers).

(f) This section shall not affect any liability otherwise imposed by law upon any director or officer.

COMPARABLE PROVISIONS:

Corp. Code §§ 823, 825, 828 (business corporation)

§ 825. False report, statement, or entry; civil liability

SOURCE:

Derived from Corp. Code § 3018\*

§ 3018. False report, statement, or entry; civil liability. Any officers, directors, employees, or agents of a corporation who do any of the following are liable jointly and severally for all the damage resulting therefrom to the corporation or any person injured thereby who relied thereon, or to both:

(a) Make, issue, deliver, or publish any prospectus, report, circular, certificate, financial statement, balance sheet, public notice, or document respecting the corporation or its shares, assets, liabilities, capital, dividends, business, earnings, or accounts which is false in any material respect, knowing it to be false, or who knowingly participate therein.

(b) Make or cause to be made in the books, minutes, records, or accounts of a corporation any entry which is false in any material particular, knowing such entry is false.

(c) Remove, erase, alter, or cancel any entry therein with intent to deceive.

Article 2. Indemnity for Litigation Expenses

§ 851. Right of officer, director, or employee to indemnity

SOURCE:

Corp. Code § 830(a) (business and nonprofit corporations) (same in substance)\*

830. (a) When a person is sued, either alone or with others, because he is or was a director, officer, or employee of a corporation, domestic or foreign, in any proceeding arising out of his alleged misfeasance or nonfeasance in the performance of his duties or out of any alleged wrongful act against the corporation or by the corporation, indemnity for his reasonable expenses, including attorneys' fees incurred in the defense of the proceeding, may be assessed against the corporation, its receiver, or its trustee, by the court in the same or a separate proceeding, if both of the following conditions exist:

(1) The person sued is successful in whole or in part, or the proceeding against him is settled with the approval of the court.

(2) The court finds that his conduct fairly and equitably merits such indemnity.

(b) The amount of ~~such~~ indemnity shall be so much of the expenses, including attorneys' fees, incurred in the defense of the proceeding, as the court determines and finds to be reasonable.

under this  
article

**COMPARABLE PROVISIONS:**

N.Y. Not-for-Profit Corporation Law § 725A; Pa. Corporation Not-for-Profit Code § 7743; ARA-ALI Model Non-Profit Corporation Act § 24(A)

**§ 725. Indemnification of directors and officers by a court**

(a) Notwithstanding the failure of a corporation to provide indemnification, and despite any contrary resolution of the board or of the members in the specific case under section 724 (Payment of indemnification other than by court award), indemnification shall be awarded by a court to the extent authorized under section 722 (Authorization for indemnification of directors and officers in actions by or in the right of a corporation to procure a judgment in its favor), section 723 (Authorization for indemnification of directors and officers in actions or proceedings other than by or in the right of a corporation to procure a judgment in its favor), and paragraph (a) of section 724. Application therefor may be made, in every case, either:

(1) In the civil action or proceeding in which the expenses were incurred or other amounts were paid, or

(2) To the supreme court in a separate proceeding, in which case the application shall set forth the disposition of any previous application made to any court for the same or similar relief and also reasonable cause for the failure to make application for such relief in the action or proceeding in which the expenses were incurred or other amounts were paid.

(b) The application shall be made in such manner and form as may be required by the applicable rules of court or, in the absence thereof, by direction of a court to which it is made. Such application shall be upon notice to the corporation. The court may also direct that notice be given at the expense of the corporation to the members and such other persons as it may designate in such manner as it may require.

(c) Where indemnification is sought by judicial action, the court may allow a person such reasonable expenses, including attorneys' fees, during the pendency of the litigation as are necessary in connection with his defense therein, if the court shall find that the defendant has by his pleadings or during the course of the litigation raised genuine issues of fact or law.

**§ 852. Application for indemnity**

**SOURCE:**

Corp. Code § 830(b) (business and nonprofit corporations) (same in substance)\*

§30.

\* \* \* \* \*  
(b) Application for ~~such~~ indemnity may be made either by a person sued or by the attorney or other person rendering services to him in connection with the defense, and the court may order fees and expenses to be paid directly to the attorney or other person, although he is not a party to the proceeding.

under this article

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 725(b)

§ 853. Service of notice of application

SOURCE:

Corp. Code § 830(c) (business and nonprofit corporations) (same in substance)\*

830.

\* \* \* \* \*

(a) ~~(c)~~ Notice of the application for such indemnity shall be served upon the corporation, its receiver, or its trustee, and upon the plaintiff and other parties to the proceeding.

(b) The court may order notice to be given also to the ~~shareholders~~ members in the manner provided in this division for giving notice of ~~shareholders'~~ members' meetings, in such form as the court directs.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 725(b)

§ 854. Voluntary payment of expenses and judgment by corporation

SOURCE:

Corp. Code § 830(f) (business and nonprofit corporations) (substantially the same)\*

830.

\* \* \* \* \*

(f) Notwithstanding the provisions of subdivisions (a), (b), (c), (d) and (e) of this section, the board of directors may authorize a corporation to pay expenses incurred by, or to satisfy a judgment or fine rendered or levied against, a present or former director, officer or employee of the corporation in an action brought by a third party against such person (whether or not the corporation is joined as a party defendant) to impose a liability or penalty on such person for an act alleged to have been committed by such person while a director, officer or employee, or by the corporation, or by both; ~~provided, the board of directors determines in good faith that such director, officer or employee was acting in good faith within what he reasonably believed to be the scope of his employment or authority and for a purpose which he reasonably believed to be in the best interests of the corporation or its shareholders.~~ members. Payments authorized hereunder include amounts paid and expenses incurred in settling any such action or threatened action. This ~~subdivision (f)~~ Section 856, does not apply to any action instituted or maintained in the right of the corporation by a shareholder or holder of a voting trust certificate representing shares of the corporation. if under this section section



COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 723\*; Pa. Corporation Not-for-profit Code § 7741; ABA-ALI Model Non-Profit Corporation Act § 24(A)

**§ 723. Authorization for indemnification of directors and officers in actions or proceedings other than by or in the right of a corporation to procure a judgment in its favor**

(a) A corporation may indemnify any person made, or threatened to be made, a party to an action or proceeding other than one by or in the right of the corporation to procure a judgment in its favor, whether civil or criminal, including an action by or in the right of any other corporation of any type or kind, domestic or foreign, or any partnership, joint venture, trust or other enterprise, which any director or officer of the corporation served in any capacity at the request of the corporation, by reason of the fact that he, his testator or intestate, was a director or officer of the corporation, or served such other corporation, partnership, joint venture, trust or other enterprise in any capacity, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein, if such director or officer acted in good faith for a purpose which he reasonably believed to be in the best interests of the corporation and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his conduct was unlawful.

(b) The termination of any such civil or criminal action or proceeding by judgment, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not in itself create a presumption that any such director or officer did not act, in good faith, for a purpose which he reasonably believed to be in the best interests of the corporation or that he had reasonable cause to believe that his conduct was unlawful.

**§ 855. Advancing litigation expenses**

**SOURCE:**

Derived from Pa. Corporation Not-for-profit Code § 7745\*

**§ 7745. Advancing expenses**

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by a nonprofit corporation in advance of the final disposition of such action, suit or proceeding as authorized by the board of directors or other body in a specific case upon receipt of an undertaking by or on behalf of the representative to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this subchapter.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law §§ 722\*, 724(c)\*

§ 722. Authorization for indemnification of directors and officers in actions by or in the right of a corporation to procure a judgment in its favor

(a) A corporation may indemnify any person, made a party to an action by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he, his testator or intestate, is or was a director or officer of the corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, or in connection with an appeal therein, except in relation to matters as to which such director or officer is adjudged to have breached his duty to the corporation under section 717 (Duty of directors and officers).

(b) The indemnification authorized under paragraph (a) shall in no case include:

(1) Amounts paid in settling or otherwise disposing of a threatened action, or a pending action with or without court approval, or

(2) Expenses incurred in defending a threatened action, or a pending action which is settled or otherwise disposed of without court approval.

§ 724. Payment of indemnification other than by court award

\* \* \* \* \*

(c) Expenses incurred in defending a civil or criminal action or proceeding may be paid by the corporation in advance of the final disposition of such action or proceeding if authorized under paragraph (b).

§ 856. Right and remedy exclusive

SOURCE:

Corp. Code § 830(e) (business and nonprofit corporations) (same in substance)\*

830.

\* \* \* \* \*

(e) The rights and remedy provided by this section are exclusive. The awarding of indemnity for expenses, including attorneys' fees, to parties to such proceedings, whether terminated by trial on the merits or by settlement or dismissal, shall be made only upon order of court pursuant to this section, and shall not be governed by any provision in the articles or bylaws of the corporation or by resolution or agreement of the corporation, its directors, or its shareholders.

article

Section 851

is

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 721; Pa. Corporation Not-for-profit Code § 7746; ABA-ALI Model Non-Profit Corporation Act § 24(A)

§ 857. Application of article

SOURCE:

Corp. Code § 830(d), (g) (business and nonprofit corporations) (same in substance)\*

§ 30.

\* \* \* \* \*

(d) This ~~section~~ applies to all proceedings specified in subdivision (a), whether brought by the corporation, its receiver, its trustee, one or more of its ~~shareholders~~, or creditors, ~~any~~ governmental body, any public official, or any private person or corporation, domestic or foreign. article

\* \* \* \* \*

(g) The provisions of this ~~section~~ shall apply to the estate, executor, administrator, heirs, legatees or devisees of a director, officer or employee, and the term "person" where used in ~~the foregoing~~ subdivisions of this section shall include the estate, executor, administrator, heirs, legatees or devisees of such person. article

this article includes

§ 858. Indemnity insurance

SOURCE:

Corp. Code § 830(h) (same in substance)\*

§ 30.

\* \* \* \* \*

(h) Nothing in this ~~section~~ shall prohibit a corporation, either domestic or foreign, from paying, in whole or part, the premium or other charge for any type of indemnity insurance in which any officer, director, or employee of such corporation or any of its subsidiary corporations is indemnified or insured against liability or loss arising out of his actual or asserted misfeasance or nonfeasance in the performance of his duties or out of any actual or asserted wrongful act against, or by, any of such corporations including, but not limited to, judgments, fines, settlements, and expenses incurred in the defense of actions, proceedings, and appeals therefrom. ~~This subdivision shall be applicable to such payments made at any time prior to or after its enactment.~~ article

**COMPARABLE PROVISIONS:**

**N.Y. Not-for-Profit Corporation Law § 727; Pa. Corporation Not-for-profit Code § 7747**

**§ 727. Insurance for indemnification of directors and officers**

(a) Subject to paragraph (b), a corporation shall have power to purchase and maintain insurance:

(1) To indemnify the corporation for any obligation which it incurs as a result of the indemnification of directors and officers under the provisions of this article, and

(2) To indemnify directors and officers in instances in which they may be indemnified by the corporation under the provisions of this article, and

(3) To indemnify directors and officers in instances in which they may not otherwise be indemnified by the corporation under the provisions of this article provided the contract of insurance covering such directors and officers provides, in a manner acceptable to the superintendent of insurance, for a retention amount and for co-insurance.

(b) No insurance under paragraph (a) may provide for any payment, other than cost of defense, to or on behalf of any director or officer:

(1) if a judgment or other final adjudication adverse to the insured director or officer establishes that his acts of active and deliberate dishonesty were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled, or

(2) in relation to any risk the insurance of which is prohibited under the insurance law of this state.

(c) Insurance under any or all subparagraphs of paragraph (a) may be included in a single contract or supplement thereto. Retrospective rated contracts are prohibited.

(d) The corporation shall, within the time and to the persons provided in paragraph (c) of section 726 (Other provisions affecting indemnification of directors and officers), mail a statement in respect to any insurance it has purchased or renewed under this section, specifying the insurance carrier, date of the contract, cost of the insurance, corporate positions insured, and a statement explaining all sums, not previously reported in a statement to members, paid under any indemnification insurance contract.

(e) This section is the public policy of this state to spread the risk of corporate management, notwithstanding any other general or special law of this state or of any other jurisdiction, including the federal government.

CHAPTER 5. CORPORATE RECORDS AND REPORTS

Article 1. Books and Records

§ 901. Books and records

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 621(a)\*

**§ 621. Books and records; right of inspection; prima facie evidence**

(a) Except as otherwise provided herein, every corporation shall keep, at the office of the corporation, correct and complete books and records of account and minutes of the proceedings of its members, board and executive committee, if any, and shall keep at such office or at the office of its transfer agent or registrar in this state, a list or record containing the names and addresses of all members, the class or classes of membership or capital certificates and the number of capital certificates held by each and the dates when they respectively became the holders of record thereof. A corporation may keep its books and records of account in an office of the corporation without the state, as specified in its certificate of incorporation. Any of the foregoing books, minutes and records may be in written form or in any other form capable of being converted into written form within a reasonable time.

COMPARABLE PROVISIONS:

Corp. Code §§ 3000-3002 (business and nonprofit corporations)\*;  
Pa. Corporation Not-for-profit Code § 7508(a); ABA-ALI Model  
Non-Profit Corporation Act § 25

**§ 3000. Minutes of meetings.** Every corporation shall keep at the principal office, or such other place as the board of directors may order, a book of minutes of all meetings of its directors and of its shareholders or members, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice thereof given, the names of those present at directors' meetings, the number of shares or members present or represented at shareholders' or members' meetings, and the proceedings thereof.

**§ 3001. Books of account.** Every corporation shall keep and maintain adequate and correct accounts of its properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, surplus, and shares. Any surplus, including earned surplus, paid-in surplus, and surplus arising from a reduction of stated capital, shall be classified according to source and shown in a separate account. The books of account shall at all reasonable times be open to inspection by any director.

3002. Every corporation for profit shall keep at the principal office, or at the office of the transfer agent, a share register, or a duplicate share register, showing the names of the shareholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for shares, and the number and date of cancellation of every certificate surrendered for cancellation. The above specified information may be kept by the corporation on punchcards, magnetic tape, or other information storage device related to electronic data processing equipment provided that such card, tape, or other equipment is capable of reproducing the information in clearly legible form for the purposes of inspection as provided in Section 3003.

§ 902. Right to inspect books and records

SOURCE:

Derived from Corp. Code § 3003 (business and nonprofit corporations)\*

**§ 3003. Inspection of records by shareholder; demand for inspection.** The share register or duplicate share register, the books of account, and minutes of proceedings of the shareholders and the board of directors and of executive committees of the directors of every domestic corporation and of foreign corporations keeping any such records in this State shall be open to inspection upon the written demand of any shareholder or holder of a voting trust certificate at any reasonable time, for a purpose reasonably related to his interests as a shareholder or as the holder of such voting trust certificate, and shall be exhibited at any time when required by the demand at any shareholders' meeting of 10 percent of the shares represented at the meeting.

Such inspection by a shareholder or holder of a voting trust certificate may be made in person or by agent or attorney, and the right of inspection includes the right to make extracts. The right of the shareholders to inspect the corporate records may not be limited in the articles or by-laws.

Demand of inspection other than at a shareholders' meeting shall be made in writing upon the president, secretary, assistant secretary, or general manager of the corporation.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 621\*; Pa. Corporation Not-for-profit Code § 7508(b), (c); ABA-ALI Model Non-Profit Corporation Act § 25

**§ 621. Books and records; right of inspection; prima facie evidence**

(a) Except as otherwise provided herein, every corporation shall keep, at the office of the corporation, correct and complete books and records of account and minutes of the proceedings of its members, board and executive committee, if any, and shall keep at such office or at the office of its transfer agent or registrar in this state, a list or record containing the names and addresses of all members, the class or classes of membership or capital certificates and the number of capital certificates held by

each and the dates when they respectively became the holders of record thereof. A corporation may keep its books and records of account in an office of the corporation without the state, as specified in its certificate of incorporation. Any of the foregoing books, minutes and records may be in written form or in any other form capable of being converted into written form within a reasonable time.

(b) Any person who shall have been a member of record of a corporation for at least six months immediately preceding his demand, or any person holding, or thereunto authorized in writing by the holders of, at least five percent of any class of the outstanding capital certificates, upon at least five days written demand shall have the right to examine in person or by agent or attorney, during usual business hours, its minutes of the proceedings of its members and list or record of members and to make extracts therefrom.

(c) An inspection authorized by paragraph (b) may be denied to such member or other person upon his refusal to furnish to the corporation, its transfer agent or registrar an affidavit that such inspection is not desired and will not be used for a purpose which is in the interest of a business or object other than the business of the corporation and that he has not within five years given, sold or offered for sale any list or record of members of any domestic or foreign corporation or aided or abetted, or attempted or offered to aid or abet, any person in procuring any such list or record of members for any such purpose.

(d) Upon refusal by the corporation or by an officer or agent of the corporation to permit an inspection of the minutes of the proceedings of its members or of the list or record of members, as herein provided, the person making the demand for inspection may apply to the supreme court in the judicial district where the office of the corporation is located, upon such notice as the court may direct, for an order directing the corporation, its officer or agent to show cause why an order should not be granted permitting such inspection by the applicant. Upon the return day of the order to show cause, the court shall hear the parties summarily, by affidavit or otherwise, and if it appears that the applicant is qualified and entitled to such inspection, the court shall grant an order compelling such inspection and awarding such further relief as to the court may seem just and proper.

(e) Upon the written request of any person who shall have been a member of record for at least six months immediately preceding his request, or of any person holding, or thereunto authorized in writing by the holders of, at least five percent of any class of the outstanding capital certificates, the corporation shall give or mail to such member an annual balance sheet and profit and loss statement or a financial statement performing a similar function for the preceding fiscal year, and, if any interim balance sheet or profit and loss or similar financial statement has been distributed to its members or otherwise made available to

the public, the most recent statement of balance sheet or profit and loss or similar financial statement. The corporation shall be allowed a reasonable time to prepare such annual balance sheet and profit and loss or similar financial statement.

(f) Nothing herein contained shall impair the power of courts to compel the production for examination of the books and records of a corporation.

(g) The books and records specified in paragraph (a) shall be prima facie evidence of the facts therein stated in favor of the plaintiff in any action or special proceeding against such corporation or any of its officers, directors or members.

§ 903. Inspection of records and production by directors

SOURCE:

Corp. Code § 3004 (business and nonprofit corporations)(same in substance)\*

**§ 3004. Inspection of records and physical properties by director; foreign corporations.** Every director ~~shall have~~ the absolute right at any reasonable time to inspect all books, records, documents of every kind, and the physical properties of the corporation, domestic or foreign, of which he is a director, and also of its subsidiary corporations, domestic or foreign. Such inspection by a director may be made in person or by agent or attorney, and the right of inspection includes the right to make extracts. In the case of foreign corporations this right extends only to such books, records, documents, and properties of such corporations as are kept or located in this State.

has

§ 904. Enforcement of right to inspect

SOURCE:

Corp. Code § 3005 (business and nonprofit corporations)(same in substance)\*

**§ 3005. Enforcement of right of inspection; judicial inspection; expenses of inspection.** Upon refusal of a lawful demand for inspection, or upon petition of the holders of ten percent ~~(10%) of the issued and outstanding shares,~~ the superior court of the county in which the principal office or in which the records are located may enforce the right of inspection with just and proper conditions, or may appoint one or more competent inspectors or accountants to audit the books and records kept in the State, and to investigate the property, funds, and affairs of any domestic corporation or any foreign corporation keeping records in this State and of any subsidiary corporation thereof, domestic or foreign, keeping records in this State, and to report thereon in such manner as the court may direct.

of the members,

**(b)** All officers and agents of the corporation shall produce to the inspectors or accountants so appointed all books and documents in



their custody or power, under penalty of punishment for contempt of court.

(c)

All expenses of the investigation or audit shall be defrayed by the applicant unless the court orders them to be paid or shared by the corporation.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 621(d)\*; Pa. Corporation Not-for-profit Code § 7308(c)

§ 621. Books and records; right of inspection;  
prima facie evidence

\* \* \* \* \*

(d) Upon refusal by the corporation or by an officer or agent of the corporation to permit an inspection of the minutes of the proceedings of its members or of the list or record of members, as herein provided, the person making the demand for inspection may apply to the supreme court in the judicial district where the office of the corporation is located, upon such notice as the court may direct, for an order directing the corporation, its officer or agent to show cause why an order should not be granted permitting such inspection by the applicant. Upon the return day of the order to show cause, the court shall hear the parties summarily, by affidavit or otherwise, and if it appears that the applicant is qualified and entitled to such inspection, the court shall grant an order compelling such inspection and awarding such further relief as to the court may seem just and proper.

Article 2. Annual Report

§ 951. Annual report required; date for preparation

SOURCE:

New

COMPARABLE PROVISIONS:

Corp. Code §§ 9402(e)(nonprofit corporation)\*; 3006 (business corporation)\*; N.Y. Not-for-Profit Corporation Law § 519\*; Pa. Corporation Not-for-profit Code § 7555\*; ABA-ALI Model Non-Profit Corporation Act § 81\*

§ 9402. Members and membership rights.

(e) The making of annual reports and financial statements to the members.

**§ 3006. Annual report; time of sending to shareholders.** The board of directors of every stock corporation shall cause an annual report to be sent to the shareholders not later than 120 days after the close of the fiscal or calendar year, unless the by-laws expressly dispense with such report.

**§ 519. Annual report of directors**

(a) The board shall present at the annual meeting of members a report, verified by the president and treasurer or by a majority of the directors, or certified by an independent public or certified public accountant or a firm of such accountants selected by the board, showing in appropriate detail the following:

(1) The assets and liabilities, including the trust funds, of the corporation as of the end of a twelve month fiscal period terminating not more than six months prior to said meeting.

(2) The principal changes in assets and liabilities, including trust funds, during the year immediately preceding the date of the report.

(3) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes, for the year immediately preceding the date of the report.

(4) The expenses or disbursements of the corporation, for both general and restricted purposes, during the year immediately preceding the date of the report.

(5) The number of members of the corporation as of the date of the report, together with a statement of increase or decrease in such number during the year immediately preceding the date of the report, and a statement of the place where the names and places of residence of the current members may be found.

(b) The annual report of directors shall be filed with the records of the corporation and either a copy or an abstract thereof entered in the minutes of the proceedings of the annual meeting of members.

(c) The board of a corporation having no members shall direct the president and treasurer to present at the annual meeting of the board a report in accordance with paragraph (a), but omitting the requirement of subparagraph (5). This report shall be filed with the minutes of the annual meeting of the board.

**§ 7555. Annual report of directors or other body**

(a) Contents.—The board of directors or other body shall present annually to the members a report, verified by the president and treasurer or by a majority of the directors or members of such other body, showing in appropriate detail the following:

(1) The assets and liabilities, including the trust funds, of the corporation as of the end of the fiscal year immediately preceding the date of the report.

(2) The principal changes in assets and liabilities including trust funds, during the year immediately preceding the date of the report.

(3) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes, for the year immediately preceding the date of the report, including separate data with respect to each trust fund held by or for the corporation.

(4) The expenses or disbursements of the corporation, for both general and restricted purposes, during the year immediately preceding the date of the report, including separate data with respect to each trust fund held by or for the corporation.

(5) The number of members of the corporation as of the date of the report, together with a statement of increase or decrease in such number during the year immediately preceding the date of the report, and a statement of the place where the names and addresses of the current members may be found.

(b) **Place of filing.**—The annual report of the board of directors or other body shall be filed with the minutes of the meetings of members.

(c) **Report in absence of meeting of members.**—The board of directors or other body of a corporation having no members shall direct the president and treasurer to present at the annual meeting of the board or of such other body a report in accordance with subsection (a) of this section, but omitting the requirement of paragraph (5) thereof. Such report shall be filed with the minutes of the annual meeting of the board or of such other body.

## SECTION 81. ANNUAL REPORT OF DOMESTIC AND FOREIGN CORPORATIONS

Each domestic corporation, 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 and the state or country under the laws of which it is incorporated.

(b) The address of the registered office of the corporation in this State, and the name of its registered agent in this State at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated.

(c) A brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in this State.

(d) The names and respective addresses of the directors and officers of the corporation.

Such annual report shall be made on forms prescribed and furnished by the Secretary of State, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, a vice president, secretary, an assistant secretary, or treasurer, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee.

#### § 952. Required provisions

##### SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 519(a)\*;  
ABA-ALI Model Non-Profit Corporation Act § 81\*

##### § 519. Annual report of directors

(a) The board shall present at the annual meeting of members a report, verified by the president and treasurer or by a majority of the directors, or certified by an independent public or certified public accountant or a firm of such accountants selected by the board, showing in appropriate detail the following:

(1) The assets and liabilities, including the trust funds, of the corporation as of the end of a twelve month fiscal period terminating not more than six months prior to said meeting.

(2) The principal changes in assets and liabilities, including trust funds, during the year immediately preceding the date of the report.

(3) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes, for the year immediately preceding the date of the report.

(4) The expenses or disbursements of the corporation, for both general and restricted purposes, during the year immediately preceding the date of the report.

(5) The number of members of the corporation as of the date of the report, together with a statement of increase or decrease in such number during the year immediately preceding the date of the report, and a statement of the place where the names and places of residence of the current members may be found.

**SECTION 81. ANNUAL REPORT OF DOMESTIC  
AND FOREIGN CORPORATIONS**

Each domestic corporation, 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 and the state or country under the laws of which it is incorporated.

(b) The address of the registered office of the corporation in this State, and the name of its registered agent in this State at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated.

(c) A brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in this State.

(d) The names and respective addresses of the directors and officers of the corporation.

Such annual report shall be made on forms prescribed and furnished by the Secretary of State, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, a vice president, secretary, an assistant secretary, or treasurer, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee.

**COMPARABLE PROVISIONS:**

Corp. Code §§ 3007, 3008 (business corporation)\*; Pa. Corporation Not-for-profit Code § 7555

**§ 3007. Contents of annual report; financial statements required.** The annual report shall include the following financial statements:

(a) A balance sheet as of such closing date.

(b) A statement of income or profit and loss for the year ended on such closing date.

Such financial statements shall be prepared from the books and shall be in accordance therewith and shall be certified by the president, secretary, treasurer, or a public accountant. They shall be prepared in a form sanctioned by sound accounting practice for the particular kind of business carried on by the corporation.

**§ 3008.** Balance sheet; contents required. The balance sheet or comments accompanying it shall set forth all of the following:

(a) The bases employed in stating the valuation of the assets and any changes in such bases during the preceding year.

(b) The amount of the surplus, the sources thereof, and any changes therein during the past year.

(c) The number of shares of each class of stock authorized and outstanding and the number of shares, if any, carried as treasury shares, the cost thereof, and the source from which such cost was paid.

(d) The amounts, if any, of loans or advances to or from officers, shareholders, and employees.

**§ 953. Duty to preserve the annual report**

**SOURCE:**

New

**COMPARABLE PROVISIONS:**

N.Y. Not-for-Profit Corporation Law § 519(b)\*; Pa. Corporation Not-for-profit Code § 7555(b)

**§ 519. Annual report of directors**

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(b) The annual report of directors shall be filed with the records of the corporation and either a copy or an abstract thereof entered in the minutes of the proceedings of the annual meeting of members.

**§ 954. Providing copies of annual report on request**

**SOURCE:**

New

**COMPARABLE PROVISIONS:**

Corp. Code § 3006 (business corporation)\*; N.Y. Not-for-Profit Corporation Law § 621(e)\*

**§ 3006. Annual report; time of sending to shareholders.** The board of directors of every stock corporation shall cause an annual report to be sent to the shareholders not later than 120 days after the close of the fiscal or calendar year, unless the by-laws expressly dispense with such report.

§ 621. Books and records; right of inspection; prima facie evidence

\* \* \* \* \*

(e) Upon the written request of any person who shall have been a member of record for at least six months immediately preceding his request, or of any person holding, or thereunto authorized in writing by the holders of, at least five percent of any class of the outstanding capital certificates, the corporation shall give or mail to such member an annual balance sheet and profit and loss statement or a financial statement performing a similar function for the preceding fiscal year, and, if any interim balance sheet or profit and loss or similar financial statement has been distributed to its members or otherwise made available to the public, the most recent such interim balance sheet or profit and loss or similar financial statement. The corporation shall be allowed a reasonable time to prepare such annual balance sheet and profit and loss or similar financial statement.

§ 955. Action to compel compliance; attorney's fees

SOURCE:

New

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 521\*; ABA-ALI Model Non-Profit Corporation Act § 85

§ 521. Liability for failure to disclose required information

Failure of the corporation to comply in good faith with the notice or disclosure or reporting provisions of section 501 (Stock and shares prohibited; membership certificates authorized), or paragraph (c) of section 503 (Capital certificates), or paragraph (c) of section 505 (Subvention certificates), or paragraph (c) of section 513 (Administration of assets received for specific purposes), or section 518 (Reports to comptroller), or section 519 (Annual report of directors), or section 520 (Reports of corporation), shall make the corporation liable for any damage sustained by any person in consequence thereof.

§ 956. Criminal penalty for fraudulent annual report

SOURCE:

Derived from Corp. Code § 3019 (business corporation)\*

§ 3019. False report or statement; refusal to keep book or post notice; criminal penalty. Every director, officer, or agent of any corporation, domestic or foreign, is guilty of a felony who knowingly concurs in making, publishing, or posting either generally or privately to the stockholders or other persons, any written report, exhibit, or

statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or any untrue or willfully or fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures, or prospects, or any other paper or document intended to produce or give, or having a tendency to produce or give, the shares of stock in such corporation a greater value or a less apparent or market value than they really possess, or refuses to make any book or post any notice required by law, in the manner required by law.

**COMPARABLE PROVISIONS:**

ABA-ALI Model Non-Profit Corporation Act § 86\*

**SECTION 86. PENALTIES IMPOSED UPON  
DIRECTORS AND OFFICERS**

Each director and officer of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this Act or answer truthfully and fully interrogatories propounded to him by the Secretary of State in accordance with the provisions of this Act, or who signs any articles, statement, report, application or other document filed with the Secretary of State which is known to such officer or director to be false in any material respect, shall be deemed to be guilty of a misdemeanor, and upon conviction thereof may be fined in any amount not exceeding five hundred dollars.

**Article 3. Statement of Identification of Corporate Offices and Officers;  
Designation of Agent for Service**

- § 975. Statement of identification of corporate offices and officers required
- § 976. Required provisions
- § 977. Designation of an agent for service of process
- § 978. Filing of statement
- § 979. Amended statement
- § 980. Supplemental statements
- § 981. Public's right to information
- § 982. Effect of article as constituting notice

**SOURCE:**

Derived from Corp. Code § 3301 (business and nonprofit corporations)\*

3301. Every domestic corporation organized on or after January 1, 1971 shall within 90 days after the filing of its articles of incorporation with the Secretary of State, and every domestic corporation heretofore or hereafter organized (other than a corporation which has already filed such a statement during the preceding three calendar months and there is no change in the information therein) shall during the period commencing on April 1st and ending on June 30th in each



year, file with the Secretary of State, on a form prescribed by him, a statement of the names and complete business or residence addresses of its president, vice president, secretary, and treasurer, together with a statement of the location and address of its principal office. If desired, the statement may designate, as the agent of such corporation for the purpose of service of process, any natural person residing in this state or any corporation which has complied with Section 3301.5 or Section 6403.5 and whose capacity to act as such agent has not terminated. If a natural person be designated, the statement shall set forth his complete business or residence address. If a corporate agent be designated, the statement shall set forth the state or place under the laws of which such agent was incorporated and the name of the city, town or village wherein it has the office at which the corporation designating it as such agent may be served, as set forth in the certificate filed by such corporate agent pursuant to Sections 3301.5, 3301.6, 6403.5 or 6403.6.

In the event of any change in the location or address of its principal office or the stated address of a natural person whom it has designated as such agent or the city, town or village wherein it may be served by delivery of a copy of any process to a corporate agent, a domestic corporation shall forthwith file with the Secretary of State a statement of such new location or address or such new city, town or village; which statement shall also include the names and addresses of the then officers, the names and addresses of whom are required above to be stated.

A corporation may at any time file a new statement wherein a new agent for service of process is designated or a prior designation of agent is expressly revoked without designating a new agent, and such filing shall be deemed to revoke any prior designation of agent.

Delivery by hand of a copy of any process against the corporation (a) to any natural person designated by it as agent, or (b), if the corporation has designated a corporate agent, at the office of such corporate agent in the city, town or village named in the statement filed by the corporation pursuant to this section to any person at such office named in the certificate of such corporate agent filed pursuant to Section 3301.5 or 6403.5, if such certificate has not been superseded, or otherwise to any person at such office named in the last certificate filed pursuant to Section 3301.6 or 6403.6, shall constitute valid service on the corporation.

The Secretary of State shall establish by regulation a fee to be charged and collected for filing a statement of the names and addresses of officers and the location and address of the principal office of the corporation as provided in this section. The filing fee shall approximate the estimated cost of such filing, and in any event shall not exceed three dollars (\$3) for each filing. For filing a combined statement of the names and addresses of officers, the location and address of the principal office and a designation of agent for service of process, the Secretary of State shall charge and collect a filing fee of five dollars (\$5). The information filed by a corporation pursuant to this section shall be made available to the public upon request. For furnishing a copy of any such statement, the Secretary of State shall charge and collect a fee of one dollar (\$1). This section shall not be construed to place any person dealing with such corporation on notice of, or on duty or obligation to inquire about the existence or content of any such statement.

In the case of a nonprofit corporation, the statement shall be filed every time there is any change of officers and every fifth year in accordance with regulations of the Secretary of State rather than each year. However, a nonprofit corporation may file a statement more frequently than every fifth year. The statement of a nonprofit corporation shall be filed without fee.

For the purpose of this section, a "nonprofit corporation" is a domestic corporation organized or existing pursuant to Part 1 (commencing with Section 9000), Part 2 (commencing with Section 10000), Part 3 (commencing with Section 10200), or Part 4 (commencing with Section 10400) of Division 2 of Title 1 of the Corporations Code, or organized or existing without authority to issue shares of stock pursuant to Division 21 (commencing with Section 29001) of the Education Code.

**COMPARABLE PROVISIONS:**

**ABA-ALI Model Non-Profit Corporation Act: § 81\***

**SECTION 81. ANNUAL REPORT OF DOMESTIC  
AND FOREIGN CORPORATIONS**

Each domestic corporation, 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 and the state or country under the laws of which it is incorporated.

(b) The address of the registered office of the corporation in this State, and the name of its registered agent in this State at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated.

(c) A brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in this State.

(d) The names and respective addresses of the directors and officers of the corporation.

Such annual report shall be made on forms prescribed and furnished by the Secretary of State, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, a vice president, secretary, an assistant secretary, or treasurer, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee.

§ 983. Disposal of superseded statements

SOURCE:

Derived from Corp. Code § 3301.3 (business and nonprofit corporations)\*

§ 3301.3 Disposal of superseded statements

The Secretary of State may destroy or otherwise dispose of any statement filed pursuant to Section 3301 after it has been superseded by the filing of a new statement.

§ 984. Default; suspension for failure to file; notice

SOURCE:

Derived from Corp. Code § 3301.1 (business and nonprofit corporations)\*

3301.1. Any corporation which shall fail to make the initial filing required by Section 3301 of a corporation organized on and after January 1, 1971, or any corporation which shall fail to make the annual filing required by such section to be made during the period commencing on April 1st and ending on June 30th in each year, shall be deemed in default and, except for the purpose of amending the articles of incorporation to set forth a new name, the corporate powers, rights and privileges of such corporation shall, as soon as practicable, be suspended by the Secretary of State and thereupon the Secretary of State shall notify the corporation and the Franchise Tax Board of such suspension. If the only address disclosed by the records of the Secretary of State for the corporation's principal office is the county in which the office is located, then such notice of the suspension of the corporation's powers shall be sent to the county seat addressed to the corporation in care of the county clerk, who shall promptly send it to the corporation at its address in the county, if known to him, or if unknown, he shall cause the notice to be posted at the courthouse of the county for 30 days.

The suspension of the corporate powers, rights and privileges shall be effective upon the transmittal to the Franchise Tax Board of notification of the suspension and has the same effect as a suspension for nonpayment of franchise taxes pursuant to Section 23301 of the Revenue and Taxation Code.

§ 985. Relief from default and suspension

SOURCE:

Derived from Corp. Code § 3301.2 (business and nonprofit corporations)\*

§ 3301.2 Relief from default and suspension

Any defaulting corporation which has suffered the suspension provided for in Section 3301.1 and whose corporate powers are not also otherwise suspended may be relieved therefrom upon making an application therefor to the Secretary of State on a form prescribed by him, making the filing required by Section 3301, and making payment of the required filing fee. Application for such relief may be made by any shareholder or creditor of the corporation or by a majority of the surviving directors or trustees of the corporation; provided, however, that if the

name of the corporation which has suffered such suspension is one which is likely to mislead the public or is the same as, or resembles so closely as to tend to deceive, the name of a foreign or domestic corporation which is authorized to transact business in this state or a name which is under reservation, the Secretary of State shall not relieve the corporation of such suspension until the corporation files in his office a certificate of amendment changing the corporate name. The Secretary of State shall promptly notify the corporation and the Franchise Tax Board of such relief from the suspension of the corporate powers pursuant to Section 3301.1, but such relief shall not revive any corporate powers then suspended pursuant to any other provision of law.

§ 986. Prior compliance with Corporations Code provisions

SOURCE:  
New

CHAPTER 6. CORPORATE FINANCE

Article 1. General Provisions

§ 1000. Stock prohibited

SOURCE:  
Derived from N.Y. Not-for-Profit Corporation Law § 501\*

§ 501. Stock and shares prohibited; membership certificates authorized

A corporation shall not have stock or shares or certificates for stock or for shares, but may issue non-transferable membership certificates or cards to evidence membership, whether or not connected with any financial contribution to the corporation, as provided in section 601 (Members). The fact that the corporation is a not-for-profit corporation, and that the membership certificate or card is non-transferable shall be noted conspicuously on the face or back of each such certificate or card.

COMPARABLE PROVISIONS:

Pa. Corporation Not-for-profit Code § 7752\*; ABA-ALI Model Non-Profit Corporation Act § 26

§ 7752. Organization on a stock share basis

(a) **General rule.**—A nonprofit corporation may be organized upon either a nonstock basis or upon a stock share basis, as set forth in its articles.

(b) **Form of certificates.**—The shares of nonprofit corporations organized upon a stock share basis shall be of such denominations as the bylaws shall provide and shall be represented by share certificates. The fact that the corporation is a nonprofit corporation shall be noted conspicuously on the face of each certificate.

(c) **Rights of shareholders.**—Unless otherwise provided in a by-law adopted by the members, each share shall entitle the holder thereof to one vote. No dividends shall be directly or indirectly

paid on any such shares, nor shall the shareholders be entitled to any portion of the earnings of such corporation derived through increment of value upon its property, or otherwise incidentally made, until the dissolution of any such corporation.

(d) **Transferability of shares.**—Unless otherwise provided in the bylaws, such shares shall not be transferable by operation of law or otherwise.

(e) **Power to cancel shares.**—A nonprofit corporation shall have power to exclude from further membership any shareholder who fails to comply with the reasonable and lawful bylaws of the corporation, and may cancel the shares of any such offending member without liability for an accounting, except as may be provided in the bylaws.

(f) **Applicability of the Uniform Commercial Code.**—The provisions of the Uniform Commercial Code shall not apply in any manner to the shares of a nonprofit corporation.

#### § 1001. Capital contributions

**SOURCE:**

Derived from N.Y. Not-for-Profit Corporation Law § 502\*; Pa. Corporation Not-for-profit Code § 7541

#### § 502. Members' capital contributions

(a) The certificate of incorporation may provide that members, upon or subsequent to admission, shall make capital contributions in the amount specified therein. The requirement of a capital contribution may apply to all members, or to the members of a single class, or to members of different classes in different amounts or proportions.

(b) A member's capital contribution shall consist of money or other property, tangible or intangible, or labor or services actually received by or performed for the corporation or for its benefit or in its formation or reorganization, or a combination thereof. In the absence of fraud in the transaction, the judgment of the board as to the value of the consideration received by the corporation shall be conclusive.

(c) Neither obligations of the member for future payments nor future services shall constitute payment or part payment of a member's capital contribution.

(d) A member's capital contribution shall be evidenced by a capital certificate which shall be non-transferable, except that the certificate of incorporation of a Type A corporation may provide that its capital certificates, or some of them, may be transferable to other members with the consent of the corporation upon specified terms and conditions.

(e) A member's capital contribution shall not be repaid or redeemed by the corporation except upon dissolution of the corporation or upon redemption of the capital certificate as provided

in this chapter. A corporation may provide in its certificate of incorporation that its capital certificates, or some of them, shall be redeemable, in whole or in part, at the option of the corporation only, at such price or prices (not to exceed the amount of the capital contribution), within such period or periods, and on such terms and conditions, not inconsistent with this chapter, as are stated in the certificate of incorporation.

## § 1002. Subventions

### SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 504\*; Pa. Corporation Not-for-profit Code § 7542

### § 504. Subventions

(a) The certificate of incorporation may provide that the corporation shall be authorized by resolution of the board to accept subventions from members or non-members on terms and conditions not inconsistent with this chapter, and to issue certificates therefor. Subvention certificates shall be nontransferable unless such resolution provides that they shall be transferable, either at will or subject to specified restrictions.

(b) A subvention shall consist of money or other property, tangible or intangible, actually received by the corporation or expended for its benefit or for its formation or reorganization, or a combination thereof. In the absence of fraud in the transaction, the judgment of the board as to the value of the consideration received by the corporation shall be conclusive.

(c) The rights of holders of subvention certificates shall at all times be subordinate to the rights of creditors of the corporation.

(d) The resolution of the board may provide that holders of subvention certificates shall be entitled to a fixed or contingent periodic payment out of the corporate assets equal to a percentage of the original amount or value of the subvention, but such payment shall not exceed two-thirds of the maximum interest rate authorized pursuant to section 5-501 of the general obligations law.

(e) The resolution of the board may provide that a subvention shall be redeemable, in whole or in part, at the option of the corporation at such price or prices (not to exceed the original amount or value of the subvention plus any periodic payments due or accrued thereon), within such period or periods, and on such terms and conditions, not inconsistent with this chapter, as are stated in the resolution.

(f) The resolution of the board may provide that holders of all or some subvention certificates shall have the right to require the corporation after a specified period of time to redeem such certificates, in whole or in part, at a price or prices that do not exceed the original amount or value of the subvention plus any periodic payments due or accrued thereon, upon an affirmative showing that the financial condition of the corporation will permit the required payment to be made without impairment of its

operations or injury to its creditors. The right to require redemption may in addition be conditioned upon the occurrence of a specified event. For the purpose of enforcing their rights under this paragraph, holders of subvention certificates shall be entitled to inspect the books and records of the corporation.

(g) Holders of subvention certificates, upon dissolution of the corporation, shall be entitled, after the claims of creditors have been satisfied, to a repayment of the original amount or value of the subvention plus any periodic payments due or accrued thereon, unless a lesser sum is specified in the certificate of incorporation or the resolution of the board concerning such subvention.

§ 1003. Subvention certificates

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 505\*

§ 505. Subvention certificates

(a) Each subvention certificate shall be signed by the chairman or a vice-chairman of the board or the president or a vice-president and the secretary or an assistant secretary or the treasurer or an assistant treasurer of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the officers upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent or registered by a registrar other than the corporation itself or its employees. In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of issue.

(b) Each subvention certificate shall when issued state upon the face thereof:

(1) That the corporation is a Type . . . . . corporation under section 113 or section 402 of the New York Not-for-Profit Corporation Law.

(2) The name of the person or persons to whom issued.

(3) The amount of the subvention evidenced by such certificate.

(4) The amount of the periodic payment thereon, if any, authorized by the resolution of the board.

(5) If appropriate, that the certificate is redeemable and a summary of the conditions for redemption at the option of the corporation or of the holder.

(6) If appropriate, that the certificate is transferable, either at will or subject to specified restrictions.

(c) The fact that the corporation is a not-for-profit corporation and, where appropriate, that the certificate is transferable at will or subject to restrictions, shall be noted conspicuously on the face or back of each such certificate.

COMPARABLE PROVISIONS:

Pa. Corporation Not-for-profit Code § 7514

§ 1004. Bonds; rights of bondholders

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 506\*

**§ 506. Bonds and security interests**

(a) No corporation shall issue bonds except for money or other property, tangible or intangible, or labor or services actually received by or performed for the corporation or for its benefit or in its formation or reorganization, or a combination thereof. In the absence of fraud in the transaction, the judgment of the board as to the value of the consideration received by the corporation shall be conclusive.

(b) A corporation may pay reasonable interest on its bonds, may issue its bonds at a reasonable discount and may pay a reasonable premium for the redemption thereof prior to maturity, but the holders of its bonds shall not be entitled at any time to receive any part of the income or profit of the corporation nor at maturity to receive more than the principal sum thereof plus interest due and accrued thereon. In the absence of fraud in the transaction, the judgment of the board as to the reasonableness of any such interest, discount or premium shall be conclusive. However, with respect to bonds not a part of a public offering, notwithstanding the terms of the instrument, no member of a corporation shall be entitled to receive, directly or indirectly, as a holder or beneficiary of such bond, prior to maturity or redemption, more than simple interest thereon at a rate equal to the higher of (1) the maximum interest authorized pursuant to section 5-501 of the general obligations law or (2) one percent over the prime rate of interest generally prevailing on the interest due date in the Federal Reserve District of New York, nor at maturity or redemption, more than the principal sum thereof plus any interest, not exceeding the maximum interest herein specified, due and accrued thereon.

(c) A corporation may, in its certificate of incorporation or by-laws, confer upon the holders of any bonds issued or to be issued by the corporation, rights to inspect the corporate books and records and, upon default of interest or principal, to vote in the election of directors. The certificate of incorporation or the by-laws may apportion the number of votes that may be cast with respect to bonds on the basis of the amount of bonds held.

(d) The board may authorize any mortgage or pledge of, or the creation of a security interest in, all or any part of the corporation's personal property, or any interest therein. Unless the certificate of incorporation provides otherwise, no vote or consent of the members shall be required to approve such action by the board.

COMPARABLE PROVISIONS:

Corp. Code §§ 306\*, 1109 (business corporation); Pa. Corporation Not-for-profit Code § 7543

**§ 306. Powers and rights of bondholders; diminishing powers or rights by amendment to articles.** The articles may confer upon the holders of any bonds, debentures, or other obligations issued or to be issued by the corporation, whether secured by mortgage or otherwise, or unsecured, any one or more of the following powers and rights:

(a) The power to vote on the election of directors, or on other matters specified in the articles.



(b) The right of inspection of books of account, minutes, and other corporate records.

(c) Any other rights to information concerning the financial condition of the corporation which its shareholders have or may have.

Notwithstanding anything to the contrary now or hereafter elsewhere contained in the General Corporation Law, any such power or rights so conferred shall not be diminished, as to bonds, debentures, or other obligations then outstanding, except by an amendment of the articles approved by the vote or written consent of the holders of a majority in principal amount thereof or such larger percentage as may be specified in the articles.

§ 1005. Income from corporate activities

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 508\*

§ 508. Income from corporate activities

A corporation whose lawful activities involve among other things the charging of fees or prices for its services or products shall have the right to receive such income and, in so doing, may make an incidental profit. All such incidental profits shall be applied to the maintenance, expansion or operation of the lawful activities of the corporation, and in no case shall be divided or distributed in any manner whatsoever among the members, directors, or officers of the corporation.

COMPARABLE PROVISIONS:

Corp. Code § 9200 (nonprofit corporation)\*; Pa. Corporation Not-for-profit Code § 7546

§ 9200. Lawful purpose without distribution of gains, profits, or dividends; incidental business for profit. A nonprofit corporation may be formed by three or more persons for any lawful purposes which do not contemplate the distribution of gains, profits, or dividends to the members thereof and for which individuals lawfully may associate themselves, such as religious, charitable, social, educational, or cemetery purposes, or for rendering services, subject to laws and regulations applicable to particular classes of nonprofit corporations or lines of activity. Carrying on business at a profit as an incident to the main purposes of the corporation and the distribution of assets to members on dissolution are not forbidden to nonprofit corporations, but no corporation formed or existing under this part shall distribute any gains, profits, or dividends to any of its members as such except upon dissolution or winding up.

§ 1006. Dividends prohibited; certain distributions allowed

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 515; Pa. Corporation Not-for-profit Code § 7553\*

§ 7553. Dividends prohibited; compensation and certain payments authorized

(a) General rule.—A nonprofit corporation shall not pay dividends or distribute any part of its income or profits to its members, directors, or officers.

(b) Reasonable compensation for services.—A nonprofit corporation may pay compensation in a reasonable amount to members, directors, or officers for services rendered.

(c) Certain payments authorized.—A nonprofit corporation may confer benefits upon members or nonmembers in conformity with its purposes, may repay capital contributions, and may redeem its subvention certificates or evidences of indebtedness, as authorized by this article, except when the corporation is currently insolvent or would thereby be made insolvent or rendered unable to carry on its corporate purposes; or when the fair value of the assets of the corporation remaining after such conferring of benefits, payment or redemption would be insufficient to meet its liabilities. A nonprofit corporation may make distributions of cash or property to members upon dissolution or final liquidation as permitted by this article.

COMPARABLE PROVISIONS:

ABA-ALI Model Non-Profit Corporation Act § 26

Article 2. Trust Property

§ 1101. Property deemed held in trust

SOURCE:

Derived from Corp. Code § 10206(d) (charitable corporation) and codifies In re Los Angeles County Pioneer Society, 40 Cal.2d 852, 257 P.2d 1 (1953), cert. denied, 346 U.S. 838 (1953), rehearing denied, 346 U.S. 928 (1953).

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 513\*; Pa. Corporation Not-for-profit Code § 7549

§ 513. Administration of assets received for specific purposes

(a) A corporation which is, or would be if formed under this chapter, classified as a Type B corporation shall hold full ownership rights in any assets consisting of funds or other real or personal property of any kind, that may be given, granted, bequeathed or devised to or otherwise vested in such corporation in trust for, or with a direction to apply the same to, any purpose specified in its certificate of incorporation, and shall not be

deemed a trustee of an express trust of such assets. Any other corporation subject to this chapter may similarly hold assets so received, unless otherwise provided by law or in the certificate of incorporation.

(b) Unless otherwise specifically directed in the instrument by which such assets are vested in the corporation, the board shall be authorized to invest the same or the proceeds thereof, separately or together with other assets of the corporation, in such investments as the board may in its discretion deem advisable, and to retain any investment heretofore so made. The board may also keep such investments or fractional interests in such investments, held by it or made by it, in the name of the corporation or in the name of a nominee of the corporation.

(c) Except as may be otherwise permitted under article eight of the estates, powers and trusts law,<sup>1</sup> the board shall apply all assets thus received to the purposes specified in the instrument by which such assets were vested in the corporation and to the payment of the reasonable and proper expenses of administration of such assets. The board shall cause accurate accounts to be kept of such assets separate and apart from the accounts of other assets of the corporation. Unless the terms of the particular trust instrument by which such assets were vested in the corporation provide otherwise, the treasurer shall make an annual report to the members (if there be members) or to the board (if there be no members) concerning the assets held under this section and the use made of such assets and of the income thereof.

(d) For the purpose of this section and of any direction with respect to principal or income in the certificate of incorporation or in the instrument by which such assets were vested in the corporation, and except as otherwise specifically provided in such certificate of incorporation or instrument with respect to the allocation of realized appreciation, the income from such assets may include so much of the realized appreciation of principal as the board may deem prudent, provided that the amount or fair value of the principal of such assets as of the end of the fiscal year in which appreciation so allocated to income was realized, after giving effect to such allocation, shall be not less than the amount or fair value of such assets at the time they were originally received by the corporation. The fair value of such assets may be determined in such manner as the board shall deem appropriate.

(e) This section shall apply to assets hereafter received as provided in paragraph (a) and to assets heretofore so received and held at the time when this chapter takes effect; except that, with respect to assets held at the time when this chapter takes effect, if the corporation has theretofore treated realized appreciation as principal, the amount of such past realized appreciation that may thereafter be transferred to income in any one year shall not exceed twenty per cent of the total.

§ 1102. Indefinite purposes

SOURCE:

Corp. Code § 10206(b) (charitable corporation) (same in substance as part)\*

§ 10206. Powers of corporation

\* \* \* \* \*

(b) To receive, hold, manage, administer, and expend property and funds upon the general charitable and eleemosynary trust that the property and funds, either as to principal or income or both, shall be applied to the assistance and support of such charitable or eleemosynary institutions or objects, at such times, and to such extent as the corporation may in its judgment deem most conducive to the public welfare. No bequest, devise, gift, or transfer of property or funds to such a corporation for a charitable or eleemosynary purpose is invalid because of indefiniteness or uncertainty as to the purposes or the beneficiaries thereof, but, to the extent to which such indefiniteness or uncertainty exists, it shall be resolved by the corporation in the manner which, in its judgment, is most consonant with the purpose of the donor and most conducive to the public welfare.

§ 1103. Duty in managing trust property

SOURCE:

New

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law §§ 512, 513; Pa. Corporation Not-for-profit Code § 7550

§ 1104. Accumulating income

SOURCE:

Corp. Code § 10207 (charitable corporation) (same in substance as part)\*

§ 10207. Supervision by attorney general; institution of corrective proceedings; accumulating income. Each such corporation shall be subject at all times to examination by the Attorney General, on behalf of the State, to ascertain the condition of its affairs and to what extent, if at all, it may fail to comply with trusts which it has assumed or may depart from the general purpose for which it is formed. In case of any such failure or departure the Attorney General shall institute, in the name of the State, the proceedings necessary to correct the noncompliance or departure. Except as specially approved by the Attorney General ~~such~~ a corporation shall not accumulate income for a period longer than five years.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 513; Pa. Corporation Not-for-Profit Code § 7550

§ 1105. Apportionment of expenses

SOURCE:

Corp. Code § 10208 (charitable corporation)(same in substance as part)\*

10208. ~~The expenses~~ Expenses of the corporation may be apportioned ~~to the extent necessary~~ in a manner which seems just and equitable against the various trust funds and property held by ~~the~~ the corporation, ~~in the manner which seems just and equitable to the corporation,~~ and the meeting of such expenses shall be deemed a charitable or eleemosynary purpose.

COMPARABLE PROVISIONS:

Pa. Corporation Not-for-profit Code § 7550

§ 1106. Transfer of property to an institutional trustee

SOURCE:

Derived from Pa. Corporation Not-for-profit Code § 7551\*

**§ 7551. Transfer of trust or other assets to institutional trustee**

(a) **General rule.**—Any nonprofit corporation holding or receiving assets under section 7549 of this title (relating to authority to take and hold trust property) may, by appropriate action of its board of directors or other body, transfer, which transfer may be either revocable or irrevocable, any such assets to a corporate trustee, which shall be a bank and trust company or a trust company incorporated under the laws of this Commonwealth or a national banking association having fiduciary powers and having its principal office in this Commonwealth, as trustee and with like investment restrictions. In like manner the corporation may transfer, which transfer shall be revocable, any other part of its assets to such a corporate trustee, subject to the same powers, restrictions and obligations with respect to investment as are applicable to the corporation itself.

(b) **Relief from liability.**—Upon such transfer the board of directors or other body of the corporation shall be relieved of all liability for the administration of such assets for as long as such assets are administered by the corporate trustee.

(c) **Amount and frequency of payment.**—Such corporate trustee shall pay, at least semi-annually or at more frequent intervals if so agreed, the net income from such assets, which may include so much of the realized appreciation of principal as the board of directors or other body of the corporation may deem prudent, to the corporation for use and application to the purpose or purposes for which the assets were received by the corporation.

**COMPARABLE PROVISIONS:**

Corp. Code § 10204 (charitable corporation)\*; N.Y. Not-for-Profit Corporation Law § 514\*

**§ 10204. Management of investments; finance committee; delegation to bank or trust company.** The articles of incorporation may prescribe that the matter of controlling, managing, investing, and disposing of the property of the corporation for the purpose of earning an income therefrom, as distinguished from the matter of applying property and funds to charitable and eleemosynary purposes, shall be exclusively in a finance committee consisting of not less than three members of the board, designated or appointed in some particular manner. The matter of controlling, managing, investing, and disposing of the property of the corporation for the purpose of earning an income therefrom may be delegated either in whole or in part to one or more trust companies or banks duly authorized to conduct a trust or banking business in this State.

**§ 514. Transfer of corporate property to a trustee**

(a) Any corporation holding or receiving assets under section 513 (Administration of assets received for specific purposes) may, by appropriate action of its board, transfer any such assets to a corporate trustee, which shall be a bank and trust company or a trust company or fund incorporated under the laws of the state of New York or a national banking association having fiduciary powers and having its principal office in this state, as trustee and with like investment restrictions.

(1) Upon such transfer, which may be revocable or irrevocable, the board of the corporation shall be relieved of all liability for the administration of such assets for as long as the latter are administered by the corporate trustees.

(2) Such corporate trustee shall pay, at least semi-annually or at more frequent intervals if so agreed, the net income of such assets, which may include so much of the realized appreciation of principal, within the limitations specified in paragraphs (d) and (e) of section 513 with respect to assets retained by the corporation, as the corporate trustee may deem prudent, to the corporation for use and application to the specific purpose or purposes for which the assets were received by the corporation.

(b) The certificate of incorporation may provide for the appointment of individual or corporate trustees for any or all of the corporate property. Such appointment may be made by an instrument which shall also state the purposes of the corporation for which such property is to be held, and may confer on such trustees such of the powers, duties or obligations of the directors in relation to the care, custody or management of such property as may be deemed appropriate.

(c) The designation of an individual or corporate trustee for corporate property shall not relieve any director of his duty to the corporation under section 717 (Duty of directors and officers) to exercise due care in the selection of the trustee and in the continuation or termination of the trust.

§ 1107. Private foundations; retention of tax exempt status; compliance with federal law

SOURCE:

Corp. Code § 9501.1 (nonprofit corporation.) (same)

§ 1108. Court action to protect trust property from misuse

SOURCE:

New

### Article 3. Common Trust Funds

§ 1151. Authorization

§ 1152. Powers of directors or trustees

§ 1153. Duty to pay semiannual dividends

SOURCE:

Derived from Corp. Code § 10250 (trust funds)\*

10250. (a) Any corporation organized under the provisions of or for the purposes set forth in Part 2 (commencing with Section 10000) or Part 3 (commencing with Section 10200) of this division may, if authorized so to do by its articles of incorporation, establish one or more common trust funds for the purpose of furnishing investments to such corporation or to any church, parish, congregation, society, chapel, mission, religious, beneficial, charitable or educational institution affiliated with it, or to any organization, society or corporation holding funds or property for the benefit of any of the foregoing, or holding funds for the purpose of supporting a bishop, priest, religious pastor, or teacher or any building or buildings used by or owned by any of the foregoing, whether holding such funds or property as fiduciary or otherwise. Notwithstanding the provisions of any general or special law in any way limiting the right of any of the foregoing or the officers or directors thereof, as fiduciary or otherwise, to invest funds held by them, it shall be lawful for any of the foregoing to invest any or all of their funds or property in shares or interests of such common trust fund or trust funds; provided, that, in the case of funds or property held as fiduciary, such investment is not prohibited by the wording of the will, deed or other instrument creating such fiduciary relationship.

(b) The directors or trustees of any such common trust fund, or trust funds, so organized, may employ such officers or agents as they think best, define their duties, and fix their compensation. They may also appoint a trust company or bank as custodian of the trust estate and may employ an investment adviser or advisers, define their duties, and fix their compensation. Securities which constitute part or all of the trust estate may be deposited in a securities depository, as defined in Section 30004 of the Financial Code, which is licensed under Section 30200 of the Financial Code or exempted from licensing thereunder by Section 30005 or 30006 of the Financial Code, and such securities may be held by such securities depository in the manner authorized by Section 775 of the Financial Code.

(c) The directors or trustees of any such common trust fund, or trust funds, shall pay ratably among the holders of shares or

beneficial certificates then outstanding, semiannual dividends which shall approximately equal, in each fiscal year, the net income of the trust, or trusts.

(d) The provisions of the Corporate Securities Law shall not apply to the creation, administration, or termination of common trust funds created hereunder, nor to participation therein.

**COMPARABLE PROVISIONS:**

Pa. Corporation Not-for-profit Code §§ 7581-7585\*

**§ 7581. Establishment or use of common trust funds authorized**

(a) **General rule.**—Every nonprofit corporation may establish and maintain one or more common trust funds, the assets of which shall be held, invested and reinvested by the corporation itself or by a corporate trustee to which the assets have been transferred pursuant to section 7551 of this title (relating to transfer of trust or other assets to institutional trustee). Upon the payment by the corporate trustee to the nonprofit corporation of the net income from such assets, for use and application to the several participating interests in such common trust fund, the proportionate participation of each interest in such net income shall be designated by the corporate trustee. The nonprofit corporation may, at any time, withdraw the whole or part of any participating interest in such common trust fund for distribution by it as provided in this subchapter.

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

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

**§ 7582. Restrictions on investments**

(a) **Legal investments.**—If the trust instrument shall limit or restrict the investment of such assets to investments of the class authorized by law as legal investments, the corporation may invest and reinvest the assets of the trust or fund in any such common trust fund maintained by the corporation, provided the investments composing such fund consist solely of investments of the class authorized by the Prudential Investment Act of 1949<sup>1</sup> to be held by fiduciaries.



(b) **Other than legal investments.**--If the trust instrument shall not limit or restrict the investment of such assets to investments of the class authorized by law as legal investments, the corporation may invest and reinvest the assets of the trust or fund in any such common trust fund maintained by the corporation, composed of such investments as in the honest exercise of the judgment of the directors or other body of the corporation they may, after investigation, determine to be safe and proper investments.

### **§ 7583. Determination of interests**

A nonprofit corporation shall invest the assets of a trust or fund in a common trust fund authorized by this subchapter by adding such assets thereto, and by apportioning a participation therein to such trust or fund in the proportion that the assets of the trust or fund added thereto bears to the aggregate value of all the assets of such common trust fund at the time of such investment, including in such assets the assets of the trust or fund so added. The withdrawal of a participation from such common trust fund shall be on a basis of its proportionate interest in the aggregate value of all the assets of such common trust fund at the time of such withdrawal. The participating interest of any trust or fund in such common trust fund may from time to time be withdrawn, in whole or in part, by the corporation. Upon such withdrawals the corporation may make distribution in cash, or ratably in kind, or partly in cash and partly in kind. Participations in such common trust funds shall not be sold by the corporation to any other corporation or person, but this sentence shall not prevent a corporate trustee designated under section 7581 of this title (relating to establishment or use of common trust funds authorized) from investing the assets of such a common trust fund in any collective investment fund established and maintained by it in accordance with law and to which the assets comprising such a common trust fund are eligible contributions.

### **§ 7584. Amortization of premiums on securities held**

If a bond or other obligation for the payment of money is acquired as an investment for any common trust fund at a cost in excess of the par or maturity value thereof, the nonprofit corporation may, during (but not beyond) the period that such obligation is held as an investment in such fund, amortize such excess cost out of the income on such obligation, by deducting from each payment of income and adding to principal an amount equal to the sum obtained by dividing such excess cost by the number of periodic payments of income to accrue on such obligation from the date of such acquisition until its maturity date.

**§ 7585. Records; ownership of assets**

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

**§ 1154. Educational institution; membership in nonprofit corporation for maintenance of common trust funds; distributions**

**SOURCE:**

Corp. Code § 10251 (trust funds) (same in substance)\*

**§ 10251. Educational institution; definition; membership in nonprofit corporation for maintenance of common trust fund; distributions**

(a) "Educational institution," as used in this section, means any nonprofit corporation organized under the provisions of Chapter 1 (commencing with Section 29001), Division 21, of the Education Code or under the provisions of ~~Part 1 (commencing with Section 4000) or Part 2 (commencing with Section 10200)~~ of this division ~~for the purpose of establishing, conducting or maintaining an institution offering courses beyond high school and issuing or conferring a diploma or for the purpose of offering or conducting private school instruction on the high school or elementary school level and any charitable trust organized for such purpose or purposes.~~ "Educational institution," as used in this section, also means the University of California, the state colleges, the state community colleges and any auxiliary organization, as defined in Section 24054.5 of the Education Code, established for the purpose of receiving gifts, property and funds to be used for the benefit of a state college.

or any law  
replaced  
by this  
division

(b) It shall be lawful for any educational institution to become a member of a nonprofit corporation incorporated under the laws of any state for the purpose of maintaining a common trust fund or similar common fund in which nonprofit organizations may commingle their funds and property for investment and to invest any and all of its funds, whenever and however acquired, in such common fund or funds: ~~provided, that, in the case of funds or property held as fiduciary,~~ such investment is not prohibited by the wording of the will, deed or other instrument creating such fiduciary relationship.

unless,

(c) An educational institution electing to invest in a common fund or funds under the provisions of this section may elect to receive distributions from each such fund in an amount not to exceed for each fiscal year the greater of the income, as defined in Section 730.03 of the Civil Code, accrued on its interest in such fund or 10 percent of the value of its interest in such fund as of the last day of its next preceding fiscal year. The educational institution may expend such distribution ~~or distributions for any lawful purpose notwithstanding the provisions of any general or special law characterizing such distribution, or any part thereof, as principal or income; provided, that, in the case of funds or property invested as fiduciary, such expenditure is not prohibited by the wording of the will, deed or other instrument creating such fiduciary relationship.~~ No such prohibition of expenditure shall be deemed to exist solely because a will, deed or other such instrument, whether executed or in effect before or after the effective date of this section, directs or authorizes the use of only the "income," or "interest," or "dividends" or "rents, issues or profits," or contains words of similar import.

unless,

(d) The provisions of the Corporate Securities Law of 1968 shall not apply to the creation, administration or termination of common trust funds authorized under this section, or to participation therein.

§ 1155. Application of Corporate Securities Law

SOURCE:

Corp. Code §§ 10250(d), 10251(d) (trust funds)\*

§ 10250. Common trust funds

\* \* \* \* \*

(d) The provisions of the Corporate Securities Law shall not apply to the creation, administration, or termination of common trust funds created hereunder, nor to participation therein.

§ 10251. Educational institution; definition; membership in nonprofit corporation for maintenance of common trust fund; distributions

\* \* \* \* \*

(d) The provisions of the Corporate Securities Law of 1968 shall not apply to the creation, administration or termination of common trust funds authorized under this section, or to participation therein.

CHAPTER 7. ORGANIC CHANGES

Article 1. Disposition of Assets

§ 1201. Disposition of all or substantially all assets

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 510\*

§ 510. Disposition of all or substantially all assets

(a) A sale, lease, exchange or other disposition of all, or substantially all, the assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of cash or other property, real or personal, including shares, bonds or other securities of any other domestic or foreign corporation or corporations of any type or kind, as may be authorized in accordance with the following procedure:

(1) If there are members entitled to vote thereon, the board shall adopt a resolution recommending such sale, lease, exchange or other disposition. The resolution shall specify the terms and conditions of the proposed transaction, including the consideration to be received by the corporation and the eventual disposition to be made of such consideration, together with a statement that the dissolution of the corporation is or is not contemplated thereafter. The resolution shall be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Notice of the meeting shall be given to each member and each holder of subvention certificates or bonds of the corporation, whether or not entitled to vote. At such meeting by two-thirds vote as provided in paragraph (c) of section 613 (Vote of members) the members may approve the proposed transaction according to the terms of the resolution of the board, or may approve such sale, lease, exchange or other disposition and may authorize the board to modify the terms and conditions thereof.

(2) If there are no members entitled to vote thereon, such sale, lease, exchange or other disposition shall be authorized by the vote of at least two-thirds of the entire board, provided that if there are twenty-one or more directors, the vote of a majority of the entire board shall be sufficient.

(3) If the corporation is, or would be if formed under this chapter, classified as a Type B or Type C corporation under section 201, (Purposes) such sale, lease, exchange or other disposition shall in addition require leave of the supreme court in the judicial district or of the county court of the county in which the corporation has its office or principal place of carrying out the purposes for which it was formed.

(b) After such authorization the board in its discretion may abandon such sale, lease, exchange or other disposition of assets, subject to the rights of third parties under any contract relating thereto, without further action or approval.

**COMPARABLE PROVISIONS:**

Corp. Code §§ 3901-3903 (business and nonprofit corporations)\*; Pa. Corporation Not-for-profit Code § 7930; ABA-ALI Model Non-Profit Corporation Act § 44

**§ 3901. Sale or transfer of all or substantially all of assets; approval of shareholders.** A corporation shall not sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of its property and assets except in accordance with one of the following subdivisions:

(a) Under Section 3900.

(b) Under authority of a resolution of its board of directors and with the approval of the principal terms of the transaction and the nature and amount of the consideration by vote or written consent of shareholders entitled to exercise a majority of the voting power of the corporation.

However, the articles may require for such approval the vote or consent of a larger proportion of the shareholders or the separate vote of a majority or a larger proportion of any class or classes of shareholders.

**§ 3902. Time of approval by shareholders.** The approval of the shareholders may be given before or after the adoption of the resolution by the board of directors, and before or after any such transfer or disposition.

§ 3903. Terms and conditions of transfer; consideration. Such sale, lease, conveyance, exchange, transfer, or other disposition may be made upon such terms and conditions and for such consideration, as the board of directors may deem for the best interests of the corporation. The consideration may be money, property, and shares of stock and other securities of any other corporation, domestic or foreign, or any of them.

§ 1202. Certificate of authorization

SOURCE:

Corp. Code § 3904 (business and nonprofit corporations) (substantially the same)\*

§ 3904. Certificate of resolution and approval; effect as evidence. Any deed or instrument conveying or otherwise transferring any assets of a corporation may have annexed to it the certificate of ~~the secretary or an assistant secretary of the corporation~~ chief officer or any two subordinate officers, setting forth the resolution of the board of directors authorizing such conveyance or other transfer and (a) stating that

the property described in ~~said~~ deed, instrument or conveyance is less the than substantially all of the assets of the corporation, if such be the case, or (b) if such property constitutes all or substantially all of the assets of the corporation, stating the fact ~~of approval thereof by the vote or written consent of the shareholders pursuant to this article~~ that such disposition has been authorized pursuant to Section 1201 or is exempt from the requirements of that section because the corporation has commenced proceedings to wind up the affairs of the corporation . Such This

certificate is prima facie evidence of the existence of the facts authorizing such conveyance or other transfer of the assets and conclusive evidence in favor of any innocent purchaser or encumbrancer for value. the

§ 1203. Hypothecation of assets to secure corporate obligation

SOURCE:

Corp. Code § 3900 (business and nonprofit corporations) (same in substance)\*

§ 3900. Hypothecation of assets to secure corporate obligation; approval of shareholders. The board ~~of directors~~ may authorize any mortgage, deed of trust, pledge, or other hypothecation of all or any part of a corporation's property, real or personal, for the purpose of securing the payment or performance of any contract, note, bond, or obligation. Unless the articles otherwise provide, no vote or consent of ~~shareholders~~ shall be necessary to authorize such action by the members is board of directors.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 509; Pa. Corporation Not-for-profit Code § 7546

Article 2. Merger and Consolidation

§ 1301. Definitions

SOURCE:

Subdivisions (a) and (b) are new; subdivisions (c), (d), and (e) are substantially the same as Corp. Code §§ 4101, 4102 (business and nonprofit corporations)\*.

**§ 4101. Surviving corporation and consolidated corporation defined.** As used in this chapter, "the surviving corporation" means the corporation into which one or more other corporations are merged, and "the consolidated corporation" means the new corporation into which two or more other corporations are consolidated.

**§ 4102. Constituent corporation defined**

As used in this chapter, "constituent corporation" means a corporation which is merged or consolidated with one or more other corporations and, in case of a merger, includes the surviving corporation.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 901

§ 1302. Power to merge or consolidate

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 901\*

**§ 901. Power of merger or consolidation**

(a) Two or more domestic corporations may, as provided in this chapter:

(1) Merge into a single corporation which shall be one of the constituent corporations; or

(2) Consolidate into a single corporation which shall be a new corporation to be formed pursuant to the consolidation.

(b) Whenever used in this article:

(1) "Merger" means a procedure of the character described in subparagraph (a) (1).

(2) "Consolidation" means a procedure of the character described in subparagraph (a) (2).

(3) "Constituent corporation" means an existing corporation that is participating in the merger or consolidation with one or more other corporations.

(4) "Surviving corporation" means the constituent corporation into which one or more other constituent corporations are merged.

(5) "Consolidated corporation" means the new corporation in which two or more constituent corporations are consolidated.

COMPARABLE PROVISIONS:

Corp. Code § 4100 (business and nonprofit corporations)\*; Pa. Corporation Not-for-profit Code § 7971; ABA-ALI Model Non-Profit Corporation Act § 28

§ 4100. Merger and consolidation. Any two or more corporations may be (a) merged into one of such corporations, or (b) consolidated into a new corporation, pursuant to this article.

§ 1303. Plan of merger or consolidation

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 902\*

§ 902. Plan of merger or consolidation

(a) The board of each corporation proposing to participate in a merger or consolidation under section 901 (Power of merger or consolidation) shall adopt a plan of merger or consolidation, setting forth:

(1) The name of each constituent corporation and if the name of any of them has been changed, the name under which it was formed, and the name of the surviving corporation, or the name or the method of determining it, of the consolidated corporation.

(2) As to each constituent corporation, a description of the membership and holders of any certificates evidencing capital contributions or subventions, including their number, classification, and voting rights, if any.

(3) The terms and conditions of the proposed merger or consolidation, including the manner and basis of converting membership or other interest in each constituent corporation into membership or other interest in the surviving or consolidated corporation, or the cash or other consideration to be paid or delivered in exchange for membership or other interest in each constituent corporation, or a combination thereof.

(4) In case of merger, a statement of any amendments or changes in the certificate of incorporation of the surviving corporation to be effected by such merger; in case of consolidation, all statements required to be included in a certificate of incorporation for a corporation formed under this chapter, except statements as to facts not available at the time the plan of consolidation is adopted by the board.

(5) In case of a merger or consolidation under section 906 (Merger or consolidation of domestic and foreign corporations), a statement of any agreements required by subparagraph (2) (D) of paragraph (d) thereof.

**COMPARABLE PROVISIONS:**

Corp. Code §§ 4103-4105 (business and nonprofit corporations)\*; Pa. Corporation Not-for-profit Code § 7922; ABA-ALI Model Non-Profit Corporation Act § 38

4103. The board of directors of each corporation seeking to merge or consolidate shall, by resolution, approve the terms and conditions of the proposed agreement and the mode of carrying them into effect, as well as the manner and basis of converting the shares of the constituent corporations into shares or other securities of the consolidated or surviving corporation or of a holding corporation of any of the constituent corporations.

The agreement may provide for the distribution of cash, property, or securities, in whole or in part, in lieu of shares, to shareholders of the constituent corporations or any class of them; but upon such distribution of cash, property, or securities, the liabilities of the consolidated or surviving corporation, including those derived by it from the constituent corporations, plus the amount of the stated capital of the consolidated or surviving corporation, shall not exceed the value of the assets of the consolidated or surviving corporation.

**§ 4104. Agreement for consolidation; articles of consolidated corporation.** If the agreement is for a consolidation, it shall state the matters required to be stated in articles of incorporation, and these statements shall be the articles of the new or consolidated corporation.

**§ 4105. Agreement for merger; amendment of articles of surviving corporation**

If the agreement is for a merger, it shall state any matters with respect to which the articles of the surviving corporation are amended, and the articles shall be amended accordingly, without any further proceedings, upon the filing of the agreement with the Secretary of State, but with respect to any such amendments, the agreement shall meet the requirements of Section 3031 in identifying any provision to be amended, stricken or added and shall set forth in full the wording of the provision as amended or added or the wording of the amended articles if they be amended in full.

If, between the date of the agreement of merger and the date of its filing with the Secretary of State, the surviving corporation acquires any of its shares, the reissue of which is prohibited by its articles, then whether or not the articles are amended pursuant to Section 1713 prior to the date of such filing, the authorized number of shares of the class or series to which such acquired shares belong is reduced to the number outstanding on the date of the filing of the agreement of merger with the Secretary of State, and the articles of incorporation or the agreement of merger shall promptly be amended in accordance with Section 1713 to reflect such reduction in authorized shares or the elimination of such class or series if all the authorized shares thereof shall have been so acquired.



§ 1304. Approval of plan

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 903\*

**§ 903. Approval of plan**

(a) The board of each constituent corporation, upon approving such plan of merger or consolidation shall submit such plan to a vote of the members in accordance with the following:

(1) Notice of meeting shall be given to each member whether or not entitled to vote. A copy of the plan of merger or consolidation or an outline of the material features of the plan shall accompany such notice.

(2) The plan of merger or consolidation shall be approved at a meeting of the members by two-thirds vote as provided in paragraph (c) of section 613 (Vote of members).

(3) If any merging or consolidating corporation has no members entitled to vote thereon, a plan of merger or consolidation shall be deemed approved by the members of the corporation when it is adopted by the board of such corporation pursuant to section 902 (Plan of merger or consolidation).

(b) Notwithstanding authorization as provided herein, at any time prior to the filing of the certificate of merger or consolidation, the plan of merger or consolidation may be abandoned pursuant to a provision for such abandonment, if any, contained in the plan of merger or consolidation.

**COMPARABLE PROVISIONS:**

Corp. Code §§ 9701, 9702 (nonprofit corporation)\*; 4107, 4112 (business corporation); Pa. Corporation Not-for-profit Code §§ 7923, 7924

9701. An agreement to merge or consolidate shall be approved by the members of each corporation. Where the members have equal voting rights, the agreement shall be approved by a resolution adopted by the vote of a majority of the members or be approved by the written consent of two-thirds of the members; or where the members have unequal voting rights, the agreement shall be approved by a resolution adopted by the vote of members entitled to exercise a majority of the voting power or be approved by the written consent of members entitled to exercise two-thirds of the voting power. This section shall be applicable regardless of any limitations or restrictions on the voting power of any class or classes of membership.

9702. Where the members act by vote, such votes shall be cast at a meeting duly called upon notice of the time, place, and purpose thereof, duly given to each member at least 20 days prior to the date of the meeting, except that such notice may be waived as provided in Section 2209. Unless the notice is waived, there shall be mailed with such notice a statement of the general terms of the proposed agreement.

§ 1305. Certificate of approval

**SOURCE:**

Derived from Corp. Code § 4110 (business and nonprofit corporations)\*

4110. After approval by the directors and shareholders has been given, the president or a vice president and the secretary or an assistant secretary of each corporation shall execute a certificate, which shall be verified by their affidavit stating, in effect, that the matters set forth in the certificate are true of their own knowledge, and shall set forth:

(a) The time and place of the meeting of the board of directors.

(b) A copy of the resolution adopted by the board of directors showing approval of the terms and conditions of the agreement of merger or consolidation.

(c) The vote in favor of the resolution.

(d) The time and place of the meeting of the shareholders to approve the agreement or the fact that written consents of all shareholders to approval of the agreement have been filed with the secretary of the corporation; that the terms and conditions of the agreement were approved at such meeting or by such written consent, and the total number of each class of shares by whose vote or written consent the agreement was approved.

(e) The total number of outstanding shares of each class.

(f) A statement of the mailing of the notice of the time, place, and purpose of the meeting of the shareholders, or, if the notice was waived pursuant to Section 2209, or if the agreement was approved by written consent of the shareholders, a statement of such fact.

(g) The name of the surviving or consolidated corporation.

(h) That the agreement for merger or consolidation with (names of other corporations which are parties to the agreement) filed with the Secretary of State concurrently with this certificate, pursuant to Section 4113, is the agreement hereinabove referred to and sets forth the terms and conditions approved by said resolution of directors and vote or written consent of shareholders.

**COMPARABLE PROVISIONS:**

N.Y. Not-for-Profit Corporation Law § 904\*; Pa. Corporation Not-for-profit Code § 7926; ABA-ALI Model Non-Profit Corporation Act § 41

**§ 904. Certificate of merger or consolidation; contents**

(a) After approval of the plan of merger or consolidation unless the merger or consolidation is abandoned in accordance with paragraph (b) of section 903 (Approval of plan) a certificate of merger or consolidation, entitled "Certificate of merger (or consolidation) of \_\_\_\_\_ and \_\_\_\_\_ into (names of corporations) under section 904 of the "Not-for-Profit Corporation Law," shall be signed and verified on behalf of each constituent corporation and delivered to the department of state. It shall set forth:

(1) The statements required by subparagraphs (a), (1), (2), and (4) of section 902 (Plan of merger or consolidation).

(2) The effective date of the merger or consolidation if other than the date of filing of the certificate of merger or consolidation by the department of state.

(3) In the case of consolidation, any statement required to be included in a certificate of incorporation for a corporation formed

under this chapter but which was omitted under sub paragraph (a) (4) of section 902.

(4) The date when the certificate of incorporation of each constituent corporation was filed by the department of state or, in the case of constituent corporations created by special law, the chapter number and year of passage of such law.

(5) The manner in which the merger or consolidation was authorized with respect to each constituent corporation.

(b) The surviving or consolidated corporation shall thereafter cause a copy of such certificate certified by the department of state, to be filed in the office of the clerk of each county in which the office of a constituent corporation, other than the surviving corporation, is located, and in the office of the official who is the recording officer of each county in this state in which real property of a constituent corporation, other than the surviving corporation, is situated.

§ 1306. Amendment to the plan

SOURCE:

Derived from Corp. Code § 4111 (business and nonprofit corporations) (substantially the same)\*

4111. Any amendment to the agreement, may be adopted, and the agreement, so amended may be approved, at the meeting of the shareholders of any of the corporations or by the written consent of such shareholders, in the same manner and by the same vote as the original agreement. If the agreement, so amended is approved at a meeting or by written consent by the shareholders, and by the board of directors of each of the corporations by the vote or written consent required for approval of the original agreement, the agreement, so amended shall be signed and acknowledged and shall have certified therewith the approval of the directors and of the shareholders, in the same manner as provided for the original agreement, and shall then constitute the merging or consolidating agreement.

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§ 1307. Filing with Secretary of State; plan and certificate of approval

SOURCE:

Corp. Code § 4113 (business and nonprofit corporations) (same in substance)\*

§ 4113. Filing with secretary of state; agreement and certificate of approval

The executed agreement, or an executed counterpart thereof, and the respective certificate, of each constituent corporation and of the surviving corporation shall be separately filed with the Secretary of State, and shall thereupon become effective, and the several parties thereto shall be one corporation. Neither the agreement, nor any certificate shall be filed however until there has been filed with the Secretary of State by or on behalf of each corporation taxed under the Bank and Corporation Franchise Tax Act, the existence of which is terminated by the merger or consolidation, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by said act have been paid or secured.

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§ 1308. Filing with the county clerk and recorder

SOURCE:

Corp. Code § 4114 (business and nonprofit corporations) (same in substance)\*

4114. A copy of the agreement of merger or consolidation, certified by the Secretary of State, shall be filed (a) with the county clerk of the county in which the principal office of each constituent corporation is located, (b) with the county clerk of the county in which the principal office of the consolidated or surviving corporation is located, and (c) with the county clerk of each county in which each corporation, including the consolidated or surviving corporation, holds real property.

There shall also be recorded in the office of the recorder of every county in this state in which any real property owned by a constituent corporation is located, a certificate prescribed by the Secretary of State.

§ 1309. Effect of merger or consolidation

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 905\*

§ 905. Effect of merger or consolidation

(a) Upon the filing of the certificate of merger and consolidation by the department of state or on such date subsequent thereto, not to exceed thirty days, as shall be set forth in such certificate, the merger or consolidation shall be effected.

(b) When such merger or consolidation has been effected:

(1) Such surviving or consolidated corporation shall thereafter, consistently with its certificate of incorporation as altered or established by the merger or consolidation, possess all the rights, privileges, immunities, powers and purposes of each of the constituent corporations.

(2) All the property, real and personal, including causes of action and every other asset of each of the constituent corporations, shall vest in such surviving or consolidated corporation without further act or deed, except as otherwise provided in paragraph (b) of section 907 (Approval by the Supreme Court). Except as the court may otherwise direct, as provided in section 8-1.1 of the Estates, Powers and Trusts Law, any disposition made in the will of a person dying domiciled in this state or in any other instrument executed under the laws of this state, taking effect after such merger or consolidation, to or for any of the constituent corporations shall inure to the benefit of the surviving or consolidated corporation. So far as is necessary for that purpose, or for the purpose of a like result with respect to a disposition governed by the law of any other jurisdiction, the existence of each constituent domestic corporation shall be deemed to continue in and through the surviving or consolidated corporation.

(3) The surviving or consolidated corporation shall assume and be liable for all the liabilities, obligations and penalties of each of the constituent corporations. No liability or obligation due or to become due, claim or demand for any cause existing against any such corporation, or any member, officer or director thereof, shall be released or impaired by such merger or consolidation. No action or proceeding, whether civil or criminal, then pending by or against any such constituent corporation, or any

member, officer or director thereof, shall abate or be discontinued by such merger or consolidation, but may be enforced, prosecuted, settled or comprised as if such merger or consolidation had not occurred, or such surviving or consolidated corporation may be substituted in such action or special proceeding in place of any constituent corporation.

(4) In the case of a merger, the certificate of incorporation of the surviving corporation shall be automatically amended to the extent, if any, that changes in its certificate of incorporation are set forth in the plan of merger; and, in the case of a consolidation, the statements set forth in the certificate of consolidation and which are required or permitted to be set forth in a certificate of incorporation of a corporation formed under this chapter shall be its certificate of incorporation.

**COMPARABLE PROVISIONS:**

**Corp. Code § 4116 (business and nonprofit corporations)\*; Pa. Corporation Not-for-profit Code § 7929; ABA-ALI Model Non-Profit Corporation Act § 42**

**§ 4116. Effect of merger or consolidation; lien on property of constituent corporation; pending actions and proceedings.** Upon merger or consolidation pursuant to this article, the separate existence of the constituent corporations ceases, and the consolidated or surviving corporation shall succeed, without other transfer, to all the rights and property of each of the constituent corporations, and shall be subject to all the debts and liabilities of each, in the same manner as if the consolidated or surviving corporation had itself incurred them.

All rights of creditors and all liens upon the property of each of the constituent corporations shall be preserved unimpaired, limited in lien to the property affected by such liens immediately prior to the time of the consolidation or merger.

Any action or proceeding pending by or against any constituent corporation may be prosecuted to judgment, which shall bind the consolidated or the surviving corporation, or the consolidated or surviving corporation may be proceeded against or substituted in its place.

§ 1310. Merger or consolidation involving foreign corporation

SOURCE:

Derived from Corp. Code §§ 4118, 4119 (business and nonprofit corporations)\*

§ 4118. Domestic and foreign corporations; state of incorporation of consolidated or surviving corporation; law applicable to proceedings

The merger or consolidation of any number of domestic corporations with any number of foreign corporations may be effected if the foreign corporations are authorized by the laws of the state or place under which they are formed to effect such a merger or consolidation.

In the case of consolidation, the consolidated corporation may be a corporation organized under the laws of any state under which any one of the constituent corporations is organized. In the case of merger, the surviving corporation may be any one of the constituent corporations and shall be deemed to continue to exist under the laws of the state of its incorporation.

If the consolidated or surviving corporation be a domestic corporation, then the consolidation or merger proceedings with respect to that corporation shall conform to the provisions of this article governing the consolidation or merger of domestic corporations, or pursuant to Section 4124, but if the consolidated or surviving corporation be a foreign corporation, then, subject to the requirements of Sections 4107 and 4119, the consolidation or merger proceedings may be in accordance with the laws of the state of incorporation or proposed incorporation of the consolidated or surviving corporation.

4119. If the consolidated or surviving corporation be a domestic corporation, the agreement and certificate of such corporation as well as the certificate of each constituent domestic corporation shall be filed in the office of the Secretary of State and thereupon the consolidation or merger shall be effective as to any such domestic corporation. Each constituent foreign corporation which is qualified for the transaction of intrastate business in this state shall file in the office of the Secretary of State a certificate of surrender of right to transact intrastate business as provided for by Section 6700. There shall also be recorded in the office of the recorder of every county in this state in which any real property owned by a constituent corporation is located a certificate prescribed by the Secretary of State as provided for by Section 4114.

If the consolidated or surviving corporation be a foreign corporation, each constituent consolidated or merged foreign corporation which is qualified for the transaction of intrastate business in this state shall file in the office of the Secretary of State a certificate of surrender of its right to transact intrastate business as provided for by Section 6700. No filing need be made in this state by or on behalf of the surviving foreign corporation even though it be qualified for the transaction of intrastate business. Each constituent domestic corporation shall file in the office of the Secretary of State a copy of the agreement, certificate or other document filed by the consolidated or surviving foreign corporation in the state or place of its incorporation for the purpose of effecting the consolidation or merger which copy shall be certified by the public officer having official custody of the original, or, in lieu thereof, an executed counterpart of the agreement or certificate and

thereupon the consolidation or merger shall be effective as to such domestic corporation. Certified copies of such agreement, certificate or other document shall be filed by each constituent domestic corporation as provided in Section 4114. There shall also be recorded in the office of the recorder of every county in this state in which any real property owned by a constituent corporation is located, a certificate prescribed by the Secretary of State as provided for by Section 4114.

**COMPARABLE PROVISIONS:**

N.Y. Not-for-Profit Corporation Law § 906\*; Pa. Corporation Not-for-profit Code § 7921; ABA-ALI Model Non-Profit Corporation Act § 43

**§ 906. Merger or consolidation of domestic and foreign corporations**

(a) One or more foreign corporations and one or more domestic corporations may be merged or consolidated into a corporation of this state or of another jurisdiction, if such merger or consolidation is permitted by the laws of the jurisdiction under which each such foreign corporation is incorporated. With respect to such merger or consolidation, any reference in paragraph (b) of section 901 (Power of merger or consolidation) to a corporation shall, unless the context otherwise requires, include both domestic and foreign corporations.

(b) With respect to procedure, including the requirement of approval by members, each domestic corporation shall comply with the provisions of this chapter relating to merger or consolidation of domestic corporations, and each foreign corporation shall comply with the applicable provisions of the law of the jurisdiction under which it is incorporated.

(c) If the surviving or consolidated corporation is, or is to be, a domestic corporation, a certificate of merger or consolidation shall be signed, verified and delivered to the department of state as provided in section 904 (Certificate of merger or consolidation; contents). In addition to the matters specified in such section, the certificate shall set forth as to each constituent foreign corporation the jurisdiction and date of its incorporation and the date when its application for authority to conduct activities in this state was filed by the department of state or, if no such application has been filed, a statement to such effect.

(d) If the surviving or consolidated corporation is, or is to be, formed under the law of any jurisdiction other than this state:

(1) It shall comply with the provisions of this chapter relating to foreign corporations if it is to conduct activities in this state.

(2) It shall deliver to the department of state a certificate, entitled "Certificate of merger (or consolidation) of ..... and ..... into ..... (names of corporations) under section 906 of the Not-for-Profit Corporation Law", which shall be signed and verified on behalf of each constituent domestic and foreign corporation. It shall set forth:

(A) The statements required by subparagraphs (a) (1) and (2) of section 902 (Plan of merger or consolidation).

(B) The jurisdiction and date of incorporation of the surviving or consolidated foreign corporation, the date when its application for authority to conduct activities in this state was filed by the department of state or, if no such application has been filed, a statement to such effect and that it is not to conduct activities in this state until an application for such authority shall have been filed by such department.

(C) The date when the certificate of incorporation of each constituent domestic corporation was filed by the department of state and the jurisdiction and date of incorporation of each constituent foreign corporation, other than the surviving or consolidated foreign corporation, and; in the case of each such corporation authorized to conduct activities in this state, the date when its application for authority was filed by the department of state.

(D) An agreement that the surviving or consolidated foreign corporation may be served with process in this state in any action or special proceeding for the enforcement of any liability or obligation of any domestic corporation or of any foreign corporation, previously amenable to suit in this state, which is a constituent corporation in such merger or consolidation, and an agreement that the surviving or consolidated foreign corporation may be sued in this state in respect of any property transferred or conveyed to it as provided in paragraph (c) of section 907 (Approval by the supreme court), or the use made of such property, or any transaction in connection therewith.

(E) A designation of the secretary of state as its agent upon whom process against it may be served in the manner set forth in paragraph (b) of section 306 (Service of process), in any action or special proceeding described in subparagraph (D) and a post office address, within or without this state, to which the secretary of state shall mail a copy of the process in such action or special proceeding.

(F) The manner in which the plan of merger or consolidation was approved with respect to each constituent domestic corporation and that the merger or consolidation is permitted by the laws of the jurisdiction of each constituent foreign corporation and is in compliance therewith.

(G) The effective date of the merger or consolidation if other than the date of filing of the certificate of merger or consolidation by the department of state.

(e) Upon the filing of the certificate of merger or consolidation by the department of state or on such date subsequent thereto, not to exceed thirty days as shall be set forth in such certificate, the merger or consolidation shall be effected.

(f) The surviving or consolidated domestic or foreign corporation shall thereafter cause a copy of such certificate, certified by the department of state, to be filed in the office of the clerk of each county in which the office of a constituent corporation, other than the surviving corporation, is located, and in the office of the official who is the recording officer of each county in this state in which real property of a constituent corporation, other than the surviving corporation, is situated.

(g) If the surviving or consolidated corporation is, or is to be, formed under the law of this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations under section 905 (Effect of merger or consolidation). If the surviving or consolidated corporation is, or is to be, incorporated under the law of any jurisdiction other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, except in so far as the law of such other jurisdiction provides otherwise.



§ 1311. Realty of constituent foreign corporations; transfer by recording agreement

SOURCE:

Corp. Code § 4122 (business and nonprofit corporations)(same)\*

4122. Whenever a foreign corporation having any real property in this state consolidates or merges with another foreign corporation pursuant to the laws of the state or place in which it was incorporated, and the laws of that state or place provide substantially that the making and filing of the agreement of consolidation or merger vests in the consolidated or surviving corporation all the real property of the constituent corporation the filing for record in the office of the recorder of any county in this state in which any of the real property of such constituent corporation is located, of either (a) a certificate, prescribed by the Secretary of State as provided for by Section 4114, executed by the Secretary of State or other official of the state or place pursuant to the laws of which the consolidation or merger is effected, or (b) a copy of the agreement of consolidation or merger, certified by the Secretary of State or other official of the state or place pursuant to the laws of which the consolidation or merger is effected, shall vest in the consolidated or surviving corporation all interest of the constituent corporation in and to the real property located in that county.

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§ 1312. Action by the Attorney General, director, or member

SOURCE:

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COMPARABLE PROVISIONS:

Corp. Code § 4123 (business corporation)\*; N.Y. Not-for-Profit Corporation Law §§ 907\*, 909\*

§ 4123. Remedies of dissenting shareholders. When the merger or consolidation of a corporation with one or more other corporations, domestic or foreign, has been approved by the requisite number of its shareholders, no shareholder of the corporation shall have any right at law or in equity to attack the validity of the merger or consolidation, or to have the merger or consolidation set aside or rescinded, except in an action to test whether the number of shares required by statute to authorize or approve the merger or consolidation have been voted in favor thereof by persons legally entitled to vote them; but any holder of shares of a class whose terms and provisions specifically set forth the amount to be paid in respect to them in the event of consolidation or merger is entitled to payment in accordance with those terms and provisions, and any other shareholder who did not approve the merger or consolidation at the meeting at which it was approved is entitled to receive the fair market value of his shares in the manner and upon the terms and conditions provided in Article 2 of this chapter.

**§ 907. Approval by the supreme court**

(a) Where any constituent corporation or the consolidated corporation is, or would be if formed under this chapter, a Type B or a Type C corporation under section 201 (Purposes) of this chapter, no certificate shall be filed pursuant to section 904 (Certificate of merger or consolidation; contents) or section 906 (Merger or consolidation of domestic and foreign corporations) until an order approving the plan of merger or consolidation and authorizing the filing of the certificate has been made by the supreme court, as provided in this section. A certified copy of such order shall be annexed to the certificate of merger or consolidation. Application for the order may be made in the judicial district in which the principal office of the surviving or consolidated corporation is to be located, or in which the office of one of the domestic constituent corporations is located. The application shall be made by all the constituent corporations jointly and shall set forth by affidavit (1) the plan of merger or consolidation, (2) the approval required by section 903 (Approval of plan) or paragraph (b) of section 906 (Merger or consolidation of domestic and foreign corporations) for each constituent corporation, (3) the objects and purposes of each such corporation to be promoted by the consolidation, (4) a statement of all property, and the manner in which it is held, and of all liabilities and of the amount and sources of the annual income of each such corporation, (5) whether any votes against adoption of the resolution approving the plan of merger or consolidation were cast at the meeting at which the resolution was adopted by each constituent corporation, and (6) facts showing that the consolidation is authorized by the laws of the jurisdictions under which each of the constituent corporations is incorporated.

(b) Upon the filing of the application the court shall fix a time for hearing thereof and shall direct that notice thereof be given to such persons as may be interested, including the attorney general, any governmental body or officer and any other person or body whose consent or approval is required by section 909 (Consent to filing), in such form and manner as the court may prescribe. If no votes against adoption of the resolution approving the plan of merger or consolidation were cast at the meeting at which the resolution was adopted by any constituent corporation the court may dispense with notice to anyone except the attorney-general, any governmental body or officer and any other person or body whose consent or approval is required by section 909 (Consent to filing). Any person interested may appear and show cause why the application should not be granted.

(c) If the court shall find that any of the assets of any of the constituent corporations are held for a purpose specified as Type B in paragraph (b) of section 201 or are legally required to be used for a particular purpose, but not upon a condition requiring return, transfer or conveyance by reason of the merger or consolidation, the court may, in its discretion, direct that such assets be transferred or conveyed to the surviving or consolidated corporation subject to such purpose or use, or that such assets

be transferred or conveyed to the surviving or consolidated corporation or to one or more other domestic or foreign corporations or organizations engaged in substantially similar activities, upon an express trust the terms of which shall be approved by the court.

(d) If the court shall find that the interests of non-consenting members are or may be substantially prejudiced by the proposed merger or consolidation, the court may disapprove the plan or may direct a modification thereof. In the event of a modification, if the court shall find that the interests of any members may be substantially prejudiced by the proposed merger or consolidation as modified, the court shall direct that the modified plan be submitted to vote of the members of the constituent corporations, or if the court shall find that there is not such substantial prejudice, it shall approve the agreement as so modified without further approval by the members. If the court, upon directing a modification of the plan of merger or consolidation, shall direct that a further approval be obtained from members of the constituent corporations or any of them, such further ap-

proval shall be obtained in the manner specified in section 903 (Approval of plan) or section 906(b) (Merger or consolidation of domestic and foreign corporations) of this chapter.

(e) If it shall appear, to the satisfaction of the court, that the provisions of this section have been complied with, and that the interests of the constituent corporations and the public interest will not be adversely affected by the merger or consolidation, it shall approve the merger or consolidation upon such terms and conditions as it may prescribe.

#### **§ 909. Consent to filing**

If the purposes of any constituent or consolidated corporation would require the approval or consent of any governmental body or officer or any other person or body under section 404 (Approvals and consents) no certificate of merger or consolidation shall be filed pursuant to this article unless such approval or consent is endorsed thereon or annexed thereto.

#### **§ 1313. Limitation on action**

**SOURCE:**

**New**

Article 3. Conversion Into Business Corporation

- § 1401. Definitions
- § 1402. Conversion into business corporation
- § 1403. Transfer of trust property
- § 1404. Certificate of conversion; filing; effect
- § 1405. Action by the Attorney General, director, or member

SOURCE:

New

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 908; Pa. Corporation Not-for-profit Code §§ 7951-7956\*

**§ 908. Merger or consolidation of business and not-for-profit corporations**

(a) One or more domestic or foreign corporations which is, or would be if formed under this chapter, a type A or type C corporation under section 201 (Purposes) may be merged or consolidated into a domestic or foreign corporation which is, or would be if formed under the laws of this state, a corporation formed under the business corporation law of this state if such merger or consolidation is not contrary to the law of the state of incorporation of any constituent corporation. With respect to such merger or consolidation, any reference in paragraph (b) of section 901 of this article or paragraph (b) of section 901 of the business corporation law to a corporation shall, unless the context otherwise requires, include both domestic and foreign corporations.

(b) With respect to procedure including authorization by shareholders or approval by members, each domestic business corporation shall comply with the business corporation law, each domestic not-for-profit corporation shall comply with the provisions of this chapter and each foreign corporation shall comply with the applicable provisions of the law of the jurisdiction under which it is incorporated.

(c) The plan of merger or consolidation shall set forth all matter required by section 902 of the business corporation law or section 902 of this chapter and the terms and conditions of the proposed merger or consolidation, including the manner and basis of converting shares, membership or other interest in each constituent corporation into shares, bonds or other securities of the surviving or consolidated corporation, or the cash or other consideration to be paid or delivered in exchange for shares, membership or other interest in each constituent corporation, or a combination thereof.

(d) After adoption of the plan of merger or consolidation by the board and members or shareholder of each constituent corporation, unless the merger or consolidation is abandoned in accordance with paragraph (d) of section 903 (Approval by members) and paragraph (b) of section 903 (Authorization by shareholders) of the business corporation law, a certificate of merger or consolidation, entitled "Certificate

of merger (or consolidation) of corporations and corporations into corporations (names of corporations) under section 905 of the Not-for-Profit Corporation Law", shall be signed and verified on behalf of each constituent corporation and delivered to the department of state.

(1) If the surviving or consolidated corporation is, or is to be, a domestic corporation such certificate shall set forth the statements required by section 904(a) of the business corporation law or section 904(a) of this chapter and, as to each constituent foreign corporation the jurisdiction and date of its incorporation and the date when its application for authority to conduct activities or do business in this state was filed by the department of state or, if no such application has been filed, a statement to such effect.

(2) If the surviving or consolidated corporation is, or is to be formed under the law of any jurisdiction other than this state such certificate shall set forth:

(A) The statements required by subparagraphs (a)(1) and (2) of section 902 of the business corporation law or subparagraphs (a)(1) and (2) of section 902 (Plan of merger or consolidation) of this chapter, and the manner in which the merger or consolidation was authorized with respect to each constituent domestic corporation.

(B) The jurisdiction and date of incorporation of the surviving or consolidated foreign corporation, the date when its application for authority to do business in this state was filed by the department of state or, if no such application has been filed, a statement to such effect and that it is not to do business in this state until an application for such authority shall have been filed by such department.

(C) The date when the certificate of incorporation of each constituent domestic corporation was filed by the department of state and the jurisdiction and date of incorporation of each constituent foreign corporation, other than the surviving or consolidated foreign corporation, and, in the case of each such corporation authorized to do business or conduct activities in this state, the date when its application for authority was filed by the department of state.

(D) An agreement that the surviving or consolidated foreign corporation may be served with process in this state in any action or special proceeding for the enforcement of any liability or obligation of any domestic corporation or of any foreign corporation, previously amenable to suit in this state, which is a constituent corporation in such merger or consolidation, and for the enforcement, as provided in the business corporation law, of the rights of shareholders of any constituent domestic business corporation to receive payment for their shares against the surviving or consolidated corporation.

(E) An agreement that, subject to the provisions of section 623 of the business corporation law, the surviving or consolidated foreign corporation will promptly pay to the shareholders of each constituent domestic business corporation the amount, if any, to which they shall be entitled under the provisions of the business corporation law relating to the right of shareholders to receive payment for their shares.

(F) A designation of the secretary of state as his agent upon whom process against it may be served in the manner set forth

in paragraph (b) of section 305 (Service of process), in any action or special proceeding described in subparagraph (D) and a post office address, within or without the state, to which the secretary of state shall mail a copy of the process in such action or special proceeding.

(e) The department of state shall not file a certificate delivered to it under subparagraph (d) (2) unless the consent of the state tax commission to the merger or consolidation is attached thereto.

(f) Where any constituent corporation is, or would be if formed under this chapter, a Type C corporation under section 291 (Purposes), no certificate shall be filed pursuant to this section until an order approving the plan of merger or consolidation and authorizing the filing of the certificate has been made by the supreme court, as provided in section 307 (Approval by the supreme court).

(g) Upon the filing of the certificate of merger or consolidation by the department of state or on such dates subsequent thereto, not to exceed thirty days, as shall be set forth in such certificate, the merger or consolidation shall be effected.

(h) The surviving or consolidated domestic or foreign corporation shall thereafter cause a copy of such certificate, certified by the department of state, to be filed in the office of the clerk of each county in which the office of a constituent corporation, other than the surviving corporation, is located, and in the office of the official who is the recording officer of each county in this state in which real property of a constituent corporation, other than the surviving corporation, is situated.

(i) When such merger or consolidation has been effected:

(A) If the surviving or consolidated corporation is, or is to be, formed under the law of this state, it shall be subject to the business corporation law and the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations under section 906 (Effect of merger or consolidation) of the business corporation law, except that in subparagraph (b) (3) of such section the word "shareholder" shall be read to include the word "member" as the latter is defined in this chapter.

(B) If the surviving or consolidated corporation is, or is to be, incorporated under the law of any jurisdiction other than this state, the effect of such merger or consolidation shall be as provided in subparagraph (A), except insofar as the law of such other jurisdiction provides otherwise.

## § 7951. Conversion authorized

(a) **Business to nonprofit.**—Any business corporation may, in the manner provided in this subchapter, be converted into a nonprofit corporation, hereinafter designated as the resulting corporation.

(b) **Nonprofit to business.**—Any nonprofit corporation may, in the manner provided in this subchapter, be converted into a business corporation, hereinafter designated as the resulting corporation.

### (c) **Exceptions.**—

(1) This subchapter shall not authorize any conversion involving:

(i) A cooperative corporation.

(ii) Beneficial, benevolent, fraternal or fraternal benefit societies having a lodge system and a representative form of government, or transacting any type of insurance whatsoever.

(iii) Any corporation which by the laws of this Commonwealth is subject to the supervision of the Department of Banking, the Insurance Department or the Pennsylvania Public Utility Commission.

(2) Paragraph (1) of this subsection shall not be construed as repealing any statute which provides a procedure for the conversion of a nonprofit corporation into an insurance corporation.

## § 7952. Proposal and adoption of plan of conversion

(a) **Preparation of plan.**—A plan of conversion shall be prepared, setting forth:

(1) The terms and conditions of the conversion.

(2) The mode of carrying the conversion into effect.

(3) A restatement of the articles of the resulting corporation, which articles shall comply with the requirements of:

(i) the Business Corporation Law,<sup>1</sup> if the resulting corporation is to be a business corporation; or

(ii) this article, if the resulting corporation is to be a nonprofit corporation.

(4) Such other details and provisions as are deemed desirable.

(b) **Proposal and adoption.**—The plan of conversion shall be proposed and adopted, and may be terminated, in the manner provided for the proposal, adoption and termination of a plan of merger in Article IX of the Business Corporation Law<sup>2</sup> (relating to merger and consolidation), in the case of a business corporation which proposes to convert into a nonprofit corporation, or in Subchapter B of this chapter (relating to merger, consolidation and sale of assets), in the case of a nonprofit corporation which proposes to convert into a business corporation.

(c) **Rights of dissenting shareholders.**—If any shareholder of a business corporation which adopts a plan of conversion into a nonprofit corporation shall object to such plan of conversion and shall comply with the provisions of section 515 of the Business Corporation Law<sup>2</sup> (relating to rights of dissenting shareholders), such shareholder shall be entitled to the rights and remedies of dissenting shareholders therein provided, notwithstanding anything to the contrary in subsection 1. of said section. There shall be included in, or enclosed with, the notice of meeting of shareholders of the business corporation called to act upon the plan of conversion a copy or a summary of the plan and a copy of this subsection and of section 515 of the Business Corporation Law.

### **§ 7953. Articles of conversion**

Upon the adoption of a plan of conversion by the corporation desiring to convert, as provided in this subchapter, articles of conversion shall be executed under the seal of the corporation by two duly authorized officers thereof, and shall set forth:

- (1) The name of the corporation and the address, including street and number, if any, of its registered office.
- (2) The statute under which the corporation was incorporated and the date of incorporation.
- (3) If the plan is to be effective on a specified date, the hour, if any, and the month, day and year of such effective date.
- (4) The manner in which the plan was adopted by the corporation.
- (5) The plan of conversion.

### **§ 7954. Filing of articles of conversion**

The articles of conversion shall be filed in the Department of State.

### **§ 7955. Effective date of conversion**

Upon the filing of articles of conversion in the Department of State, or upon the effective date specified in the plan of conversion, whichever is later, the conversion shall become effective.

### **§ 7956. Effect of conversion**

(a) **Business to nonprofit.**—Upon the conversion becoming effective the corporation, if theretofore a business corporation, shall be deemed to be a nonprofit corporation for all purposes, shall cease to be a business corporation and shall not thereafter operate in any manner resulting in pecuniary profit, incidental or otherwise, to its members or shareholders. The corporation shall remain liable for all existing obligations, public or private, taxes due the Commonwealth or any other taxing authority for periods prior to the effective date of the conversion, and, as such nonprofit corporation, it



shall continue to be entitled to all assets therefore pertaining to it as a business corporation.

(b) **Nonprofit to business.**—Upon the conversion becoming effective the corporation, if theretofore a nonprofit corporation, shall be deemed to be a business corporation for all purposes, shall cease to be a nonprofit corporation, and may thereafter operate for a purpose or purposes resulting in pecuniary profit, incidental or otherwise, to its members or shareholders. The corporation shall issue share certificates to each shareholder entitled thereto. The corporation shall remain liable for all existing obligations, public and private, taxes due the Commonwealth or any other taxing authority for periods prior to the effective date of the conversion, and, as such business corporation, it shall continue to be entitled to all assets theretofore pertaining to it as a nonprofit corporation except as otherwise provided by order, if any, obtained pursuant to section 7549(b) of this title (relating to nondiversion of certain property).

## CHAPTER 8. DISSOLUTION

### Article 1. Voluntary Dissolution

#### § 1501. "Plan of dissolution"

SOURCE:  
New

#### § 1502. Adopting a plan of dissolution

SOURCE:  
Derived from N.Y. Not-for-Profit Corporation Law § 1001\*

##### § 1001. Plan of dissolution and distribution of assets

(a) The board shall adopt a plan for the dissolution of the corporation and the distribution of its assets. Such plan shall implement any provision in the certificate of incorporation prescribing the distributive rights of members.

(b) If the corporation is a Type B or Type C corporation and has no assets to distribute at the time of dissolution, the plan of dissolution shall include a statement to that effect, and a certified copy of such plan shall be filed with the attorney general within ten days after its adoption by the board.

#### COMPARABLE PROVISIONS:

Corp. Code § 4600 (business and nonprofit corporations); Pa. Corporation Not-for-profit Code § 7961; ABA-ALI Model Non-Profit Corporation Act §§ 45, 47

§ 1503. Authorization of plan to dissolve

SOURCE:

New

COMPARABLE PROVISIONS:

Corp. Code §§ 4600\*, 4601(b)(business and nonprofit corporations)\*;  
N.Y. Not-for-Profit Corporation Law §§ 1002\*, 1102(a)(1)\*; ABA-ALI  
Model Non-Profit Corporation Act § 45

§ 4600. Election by shareholders; required vote. Any corporation may elect to wind up its affairs and voluntarily dissolve by the vote or written consent of shareholders or members representing 50 percent or more of the voting power.

§ 4601. Election by directors; grounds  
\* \* \* \* \*

(b) A corporation which has been adjudged to be bankrupt.

§ 1002. Authorization of plan.

(a) Upon adopting a plan of dissolution and distribution of assets, the board shall submit it to a vote of the members. Such plan shall be approved at a meeting of members by two-thirds vote as provided in paragraph (c) of section 613 (Vote of members).

(b) If there are no members entitled to vote on the dissolution of the corporation, the plan of dissolution and distribution of assets shall be deemed authorized upon its adoption by the board.

(c) Whenever a statute creating, or authorizing the formation of, a corporation required approval by a governmental body or officer for the formation of such corporation, dissolution shall not be authorized without the approval of such body or officer.

(d) The plan of dissolution and distribution of assets shall have annexed thereto the approval of a justice of the supreme court in the judicial district in which the office of the corporation is located in the case of a Type B or Type C corporation, and in the case of any other corporation which holds assets at the time of dissolution legally required to be used for a particular purpose, except that no such approval shall be required with respect to the plan of dissolution of a corporation, referred to in paragraph (b) of section 1001 (Plan of dissolution and distribution of assets), which has no assets to distribute at the time of dissolution and which has complied with the requirements of such paragraph. Application to the supreme court for an order for such approval shall be by verified petition, with certified copies of the consents prescribed by this section annexed thereto, and upon ten days written notice to the attorney general accompanied by copies of such petition and consents.

**§ 1102. Judicial dissolution; petition by directors or members; petition in case of deadlock among directors or members**

(a) A petition for the judicial dissolution of a corporation may be presented:

(1) By a majority of the directors then in office, or by the members, or such of them as are designated for such purpose, when authorized to do so by a resolution adopted by majority vote as provided in paragraph (c) of section 613 (Vote of members) (provided that, notwithstanding any provision of the certificate of incorporation or the by-laws, a members' meeting to consider such a resolution may be called, no more often than once in any period of twelve consecutive months, by ten percent of the members entitled to vote thereon or by such lesser percentage or number of members as may be provided in the certificate of incorporation or by-laws), in the following cases:

(A) The assets of the corporation are not sufficient to discharge its liabilities.

(B) Dissolution will be beneficial to the members.

(2) By ten percent of the total number of members or by any director, in the following cases:

(A) The directors are so divided respecting the management of the corporation's affairs that the votes required for action by the board cannot be obtained.

(B) The members are so divided that the votes required for the election of directors cannot be obtained.

(C) There is internal dissension and two or more factions of members are so divided that dissolution would be beneficial to the members.

(D) The directors or members in control of the corporation have looted or wasted the corporate assets, have perpetuated the corporation solely for their personal benefit, or have otherwise acted in an illegal, oppressive or fraudulent manner.

(E) The corporation is no longer able to carry out its purposes.

§ 1504. Time of commencement of proceedings

SOURCE:

Derived from Corp. Code § 4604 (business and nonprofit corporations)\*

**§ 4604. Time of commencement of proceedings.** Voluntary proceedings for winding up the corporation are deemed to commence upon the adoption of the resolution of shareholders or directors of the corporation electing to wind up and dissolve, or upon the filing with the corporation of the written consent of shareholders thereto. However, if such proceedings are instituted because of the expiration of the term of corporate existence or other dissolution of the corporation, the proceedings for winding up are deemed to commence at the date of termination of its corporate existence.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 1004; Pa. Corporation Not-for-profit Code § 7965; ABA-ALI Model Non-Profit Corporation Act § 45

§ 1505. Effect of commencement of proceedings

SOURCE:

Corp. Code § 4605 (business and nonprofit corporations)(substantially the same as part)\*

**§ 4605. Cessation of business; notice of commencement of proceedings; shareholders; creditors**

When a voluntary proceeding for winding up has commenced, the corporation shall cease to carry on business, except to the extent necessary for the beneficial winding up thereof, and except during such period as the board of directors may deem necessary to preserve the corporation's good will or going concern value pending a sale

of its business as assets, or both, in whole or in part for the successful winding up of those activities and to preserve the value of the corporation's assets pending sale or other disposition. The directors forthwith shall

cause written notice of the commencement of the proceeding for voluntary winding up to be given by mail to all shareholders and to all known creditors and claimants whose addresses appear on the records of the corporation.

its activities

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COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 1005; Pa. Corporation Not-for-profit Code § 7965; ABA-ALI Model Non-Profit Corporation Act § 45

§ 1506. Filing certificate of commencement of proceedings

SOURCE:

Derived from Corp. Code § 4603 (business and nonprofit corporations)\*

**§ 4603. Certificate of election to wind up and dissolve; filing; signing; verification; contents.** Whenever a corporation has elected to wind up and dissolve a certificate evidencing such election shall be forthwith filed in the Office of the Secretary of State and a copy

thereof, certified by the Secretary of State, shall be filed in the office of the county clerk of the county in which the principal office of the corporation is located.

The certificate shall be signed by the president or vice president and the secretary or assistant secretary, or by at least a majority of the directors, or by one or more shareholders or members authorized to do so by shareholders or members holding or representing at least 50 percent of the voting power, and verified by their affidavit stating, in effect, that the matters set forth in the certificate are true of their own knowledge, and shall set forth:

(a) That the corporation has elected to wind up and dissolve.

(b) If the election was made by the vote or written consent of shareholders or members, the number of shares or memberships voting for or consenting to the election and the total number of outstanding shares or memberships the holders of which were entitled to vote on or consent to the election.

(c) If the certificate be executed by shareholders or members as such, that the subscribing shareholders or members were authorized to execute the certificate by shareholders or members holding or representing 50 percent or more of the voting power.

(d) If the election to dissolve was made by the board of directors pursuant to Section 4601, the certificate shall also set forth the vote by which the election was made and the circumstances showing the corporation to be within one of the categories described in said Section 4601.

**COMPARABLE PROVISIONS:**

Pa. Corporation Not-for-profit Code § 7965

§ 1507. Notice of commencement of proceedings

**SOURCE:**

Derived from N.Y. Not-for-Profit Corporation Law § 1007(a)\*

**§ 1007. Notice to creditors; filing or barring claims**

(a) At any time after dissolution, the corporation may give a notice requiring all creditors and claimants, including any with unliquidated or contingent claims and any with whom the corporation has unfulfilled contracts, to present their claims in writing and in detail at a specified place and by a specified day, which shall not be less than six months after the first publication of such notice. Such notice shall be published at least once a week for two successive weeks in a newspaper of general circulation in the county in which the office of the corporation was located at the date of dissolution. On or before the date of the first publication of such notice, the corporation shall mail a copy thereof, postage prepaid and addressed to his last known address, to each person believed to be a creditor of or claimant against the corporation whose name and address are known to or can with due diligence be ascertained by the corporation. The giving of such notice shall not constitute a recognition that

any person is a proper creditor or claimant, and shall not revive or make valid, or operate as a recognition of the validity of, or a waiver of any defense or counterclaim in respect of any claim against the corporation, its assets, directors, officers or members, which has been barred by any statute of limitations or become invalid by any cause, or in respect of which the corporation, its directors, officers or members, has any defense or counterclaim.

**COMPARABLE PROVISIONS:**

Corp. Code § 4605 (business and nonprofit corporations)\*; Pa. Corporation Not-for-profit Code § 7967(b); ABA-ALI Model Non-Profit Corporation Act § 45

**§ 4605. Cessation of business; notice of commencement of proceedings; shareholders; creditors**

When a voluntary proceeding for winding up has commenced, the corporation shall cease to carry on business except to the extent necessary for the beneficial winding up thereof, and except during such period as the board of directors may deem necessary to preserve the corporation's good will or going-concern value pending a sale of its business or assets, or both, in whole or in part. The directors forthwith shall cause written notice of the commencement of the proceeding for voluntary winding up to be given by mail to all shareholders and to all known creditors and claimants whose addresses appear on the records of the corporation.

**§ 1508. Function of directors in voluntary proceedings**

**SOURCE:**

Derived from Corp. Code §§ 4800, 4801 (business and nonprofit corporations)\*

**§ 4800. Function of directors in voluntary proceedings.** When voluntary proceedings for winding up or dissolution of a corporation have been commenced, the board of directors shall continue to act as a board and shall have full powers to wind up and settle its affairs. If the directors have not theretofore elected officers of the corporation pursuant to Section 821, the directors shall elect them and such assistants as the directors deem proper. Any act authorized or approved by a majority of the directors acting as a board is valid and binding as though authorized and consented to by all of the directors.

**§ 4801. Powers and duties.** The powers and duties of the directors after commencement of such proceedings include, but are not limited to, the following acts in the name and on behalf of the corporation:

(a) To elect officers and to employ agents and attorneys to liquidate or wind up its affairs.

(b) To continue the conduct of the business insofar as necessary for the disposal or winding up thereof.

(c) To carry out contracts and collect, pay, compromise, and settle debts and claims for or against the corporation.

(d) To defend suits brought against the corporation.

(e) To sue, in the name of the corporation, for all sums due or owing to the corporation or to recover any of its property.

(f) To collect any amounts remaining unpaid on subscriptions to shares or any overpayments or unlawful distributions.

(g) To sell at public or private sale, exchange, convey, or otherwise dispose of, all or any part of the assets of the corporation, upon such terms and conditions and for such considerations as such board deems reasonable or expedient, and to execute bills of sale and deeds of conveyance in the name of the corporation. If sale or exchange of all or substantially all of the assets of a corporation for profit is made for a consideration consisting in whole or in part of shares, obligations, or securities of another corporation, domestic or foreign, or any consideration other than money, it shall be approved or ratified by the vote or written consent of holders of shares entitled to exercise a majority of the voting power of the corporation, either before or after the action of the directors.

(h) In general, to make contracts and to do any and all things in the name of the corporation which may be proper or convenient for the purposes of winding up, settling, and liquidating the affairs of the corporation.

**COMPARABLE PROVISIONS:**

N.Y. Not-for-Profit Corporation Law § 1006; Pa. Corporation Not-for-profit Code § 7967

§ 1509. Court supervision

**SOURCE:**

Derived from N.Y. Not-for-Profit Corporation Law § 1008\*

**§ 1008. Jurisdiction of supreme court to supervise dissolution and liquidation**

(a) At any time after the filing of a certificate of dissolution under this article, the supreme court in the judicial district where the office of the corporation was located at the date of its dissolution, in a special proceeding instituted under this section, upon the petition of the corporation or, in a situation approved by the court, upon the petition of a creditor, claimant, director, officer, member, subscriber for capital certificates, incorporator or the attorney-general, may suspend or annul the dissolution or continue the liquidation of the corporation under the supervision of the court and may make all such orders as it may deem proper in all matters in connection with the dissolution or the winding

up of the affairs of the corporation, and in particular, and without limiting the generality of the foregoing, in respect of the following:

(1) The determination of the validity of the authorization of the dissolution of the corporation and of the execution and delivery of the certificate of dissolution under this article.

(2) The adequacy of the notice given to creditors and claimants and, if it is determined to have been inadequate, the requirement of such further notice as the court may deem proper.

(3) The determination of the validity and amount of invalidity of any claims which have been presented to the corporation.

(4) The barring of all creditors and claimants who have not timely filed claims as provided in any such notice, or whose claims have been disallowed by the court, as against the corporation, its assets, directors, officers and members.

(5) The determination and enforcement of the liability of any director, officer, member or subscriber for capital certificates, to the corporation or for the liabilities of the corporation.

(6) The presentation and filing of intermediate and final accounts of the directors, the hearing thereon, the allowance or disallowance thereof, and the discharge of the directors, or any of them, from their liabilities.

(7) The administration of any trust, or the disposition of any property held in trust by or for the corporation.

(8) The adequacy of a plan of distribution.

(9) The payment, satisfaction or compromise of claims against the corporation, the retention of assets for such purpose, and the determination of the adequacy of provisions made for payment of the liabilities of the corporation.

(10) The disposition or destruction of records, documents and papers of the corporation.

(11) The appointment and removal of a receiver under article 12 (Receivership) who may be a director, officer or member of the corporation.

(12) The issuance of injunctions for one or more of the purposes and as provided in section 1113 (Injunction).

(13) The return of subscription payments to subscribers for capital certificates, and the making of distributions, in cash or in kind or partly in each, to the members.

(14) The payment to the state comptroller, as abandoned property, of assets under subparagraph (a) (4) of section 1005 (Procedure after dissolution).

(15) Where assets were received and held by the corporation for a purpose specified as Type B in paragraph (b) of section 201 (Purposes), or were legally required to be used for a particular purpose, the distribution of such assets to one or more domestic or foreign corporations or other organizations engaged in activities substantially similar to those of the dissolved corporation, on notice to the attorney-general and to such other persons, and in such manner, as the court may deem proper.



(b) No order annulling a dissolution shall be made under this section if the name of the corporation whose dissolution is to be annulled is no longer available for use by such corporation, unless such corporation submits with its petition for the annulment of the dissolution a certificate of reservation of another available name.

(c) Orders under this section may be entered ex parte, except that if such special proceeding was not instituted upon petition of the corporation, notice shall be given to the corporation in such manner as the court may direct. Notice shall be given to other persons interested, and in such manner, as the court may deem proper, of any hearings and of the entry of any orders on such matters as the court shall deem proper. All orders made by the court under this section shall be binding upon the attorney general, the corporation, its directors, officers, members, subscribers for capital certificates, incorporators, creditors and claimants.

**COMPARABLE PROVISIONS:**

Corp. Code §§ 4607, 4609-4619 (business and nonprofit corporations)\*;  
Pa. Corporation Not-for-profit Code § 7968

**§ 4607. Court supervision of winding up; petition**

If a corporation is in the process of voluntary winding up, the superior court of the county in which the principal office of the corporation is located, upon the petition of (a) the corporation, or (b) the holders of 5 percent or more of the number of its outstanding shares, or of (c) three or more creditors, or of (d) three or more persons who have purchased homes from a construction corporation, and upon such notice to the corporation and to other persons interested in the corporation as shareholders or creditors as the court may order, may make orders and adjudge as to any and all matters concerning the winding up of the affairs of the corporation.

If the corporation has, within 18 months prior to the commencement of the proceedings for winding up, been engaged in the business of constructing, or contracting or subcontracting for the construction of buildings for residential use, the court shall, in making orders and adjudging as to matters concerning the winding up, make such provision as it deems reasonably necessary to protect the rights of the purchasers of the homes, including rights which may arise against the corporation for breach of warranties in connection with the construction. The protection so afforded shall extend to rights which may arise with respect to buildings whose construction was completed within 18 months prior to the commencement of the proceedings for winding up, and the orders and decrees extending the protection shall have a duration of at least 18 months after the filing of the petition but may be made effective for a longer period at the discretion of the court.

**§ 4609. Determination of claims and assets available for distribution to shareholders.** The jurisdiction of the court includes the settlement or determination of all claims of every nature against the corporation or any of its property, or the amount of money or assets required to be retained to pay or provide for the payment of such claims, or any claim, or the amount of money or assets available for distribution among shareholders from time to time. The court may order the bringing in of new parties as it deems proper for the determination of all questions and matters.

**§ 4611. Accounts of directors.** The jurisdiction of the court includes the presentation and the filing of intermediate and final accounts of the directors and hearings thereon, and the allowance, disallowance, or settlement thereof, and the discharge of the directors from their duties and liabilities.

**§ 4612. Appointment and powers of referees.** The jurisdiction of the court includes the appointment of a referee to hear and determine any or all matters, with such power or authority as the court or judge may deem proper.

**§ 4613. Filling vacancy in board of directors.** The jurisdiction of the court includes the filling of any vacancies in the number of directors which the directors or shareholders are unable to fill.

**§ 4614. Removal, election, and appointment of director.** The jurisdiction of the court includes the removal of any director if it appears that he has been guilty of dishonesty, misconduct, neglect, or abuse of trust in conducting the winding up, or if he is unable to act. The court may order an election to fill the vacancy so caused, and may enjoin, for such time as it considers proper, the reelection of the directors so removed; or the court, in lieu of ordering an election, may appoint a director to fill the vacancy caused by such removal. Any director so appointed by the court shall serve until the next annual meeting of shareholders or until his successor is elected or appointed.

**§ 4615. Notice of hearing or order.** The jurisdiction of the court includes the notice to be given of any hearing or any order. Except in the case of notices for which special provision is made in this division any notice may be given by mail if so ordered.

**§ 4616. Staying actions and proceedings.** The jurisdiction of the court includes staying the prosecution of any suit, proceeding, or action against the corporation and requiring the parties to present and prove their claims in the manner required of creditors.

**§ 4617. Provision for satisfaction of unpaid claims.** The jurisdiction of the court includes determining whether adequate provision has been made for payment or satisfaction of all debts and liabilities not actually paid.

**§ 4618. Revocation of election to wind up and dissolve; conditions for protection of shareholders and creditors.** The jurisdiction of the court includes the revocation of the election to wind up and dissolve by the shareholders, and the making of orders for the withdrawal and termination of proceedings to wind up and dissolve, subject to conditions for the protection of shareholders and creditors.

**§ 4619. Order of dissolution.** The jurisdiction of the court includes the making of an order, upon the allowance or settlement of the final accounts of the directors, that the corporation has been duly wound up and is dissolved, which order shall meet the requirements of Section 5204 of this code as to contents. Upon the making of such order, the corporate existence shall cease except for purposes of further winding up if needed.

§ 1510. Presentation and proof of claims

SOURCE:

Derived from Corp. Code § 4608 (business and nonprofit corporations)\*

**§ 4608. Presentation and proof of claims**

**Jurisdiction.** The jurisdiction of the court includes the presentation and proof of all claims and demands against the corporation, whether due or not yet due, contingent, unliquidated, or sounding only in damages, and the barring from participation of creditors and claimants failing to make and present claims and proofs as required by any order.

**Barring claims for lack of timely presentation and proof.** All creditors and claimants may be barred from participation in any distribution of the general assets if they fail to make and present claims and proofs within such time as the court may direct, which shall not be less than four nor more than six months after the first publication of notice to creditors unless it appears by affidavit that there are no claims, in which case the time limited may be three months. If it is shown that a claimant did not receive notice because of absence from the State or other cause, the court may allow a claim to be filed or presented at any time before distribution is completed.

**Notice to creditors; publication; meeting.** Such notice to creditors shall be published not less than once a week for three consecutive weeks in some newspaper of general circulation published in the county in which the principal office is located, or, if there is no such newspaper published in that county, in such newspaper as may be designated by the court, directing creditors and claimants to make and present claims and proofs to the person, at the place, and within the time limited by the order. A copy of the notice shall be mailed to each person shown as a creditor or claimant by the books of the corporation, at his last known address.

**Secured claims; effect of failure to present.** Holders of secured claims may prove for the whole debt in order to realize any deficiency. If such creditors fail to present their claims they shall be barred only as to any right to claim against the general assets for any deficiency in the amount realized on their security.

**Unmatured, contingent, or disputed claims.** Before any distribution is made the amount of any unmatured, contingent, or disputed claim against the corporation which has been presented and has not been disallowed, or such part of any such claim as the holder would be entitled to if the claim were due, established, or absolute, shall be paid into court and there remain to be paid over to the party when he becomes entitled thereto, or if he fails to establish his claim, to be paid over or distributed with the other assets of the corporation to those entitled thereto, or such other provision for the payment of such claim shall be made as the court may deem adequate. If a creditor whose claim has been allowed but is not yet due consents to the payment of the present value of his claim he shall be entitled to its present value upon distribution.

**Limitations of action on rejected claims.** Suits against the corporation on claims which have been rejected shall be commenced within 30 days after written notice of rejection thereof is given to the claimant.

**COMPARABLE PROVISIONS:**

N.Y. Not-for-Profit Corporation Law § 1007\*; Pa. Corporation Not-for-profit Code § 7971

**§ 1007. Notice to creditors; filing or barring claims**

(a) At any time after dissolution, the corporation may give a notice requiring all creditors and claimants, including any with unliquidated or contingent claims and any with whom the corporation has unfulfilled contracts, to present their claims in writing and in detail at a specified place and by a specified day, which shall not be less than six months after the first publication of such notice. Such notice shall be published at least once a week for two successive weeks in a newspaper of general circulation in the county in which the office of the corporation was located at the date of dissolution. On or before the date of the first publication of such notice, the corporation shall mail a copy

thereof, postage prepaid and addressed to his last known address, to each person believed to be a creditor of or claimant against the corporation whose name and address are known to or can with due diligence be ascertained by the corporation. The giving of such notice shall not constitute a recognition that any person is a proper creditor or claimant, and shall not revive or make valid, or operate as a recognition of the validity of, or a waiver of any defense or counterclaim in respect of any claim against the corporation, its assets, directors, officers or members, which has been barred by any statute of limitations or become invalid by any cause, or in respect of which the corporation, its directors, officers or members, has any defense or counterclaim.

(b) Any claims which shall have been filed as provided in such notice and which shall be disputed by the corporation may be submitted for determination to the supreme court under section 1008 (Jurisdiction of supreme court to supervise dissolution and liquidation). A claim filed by the trustee or paying agent for the holders of bonds or coupons shall have the same effect as if filed by the holder of any such bonds or coupons. Any person whose claim is, at the date of the first publication of such notice, barred by any statute of limitations is not a creditor or claimant entitled to any notice under this section or section 1008. The claim of any such person and all other claims which are not timely filed as provided in such notice except claims which are the subject of litigation on the date of the first publication of such notice and all claims which are so filed but are disallowed by the court under section 1008, shall be forever barred as against the corporation, its assets, directors, officers and members, except to such extent, if any, as the court may allow them against any remaining assets of the corporation in the case of a creditor who shows satisfactory reason for his failure to file his claim as so provided. If the court requires a further notice under section 1008, any reference to a notice in this section shall, to the extent that the court so orders, mean such further notice, except that a claim which has been filed in accordance with a notice under this section need not be refiled under such further notice.

(c) Notwithstanding this section and section 1008, tax claims and other claims of this state and of the United States shall not be required to be filed under those sections, and such claims shall not be barred because not so filed, and distribution of the assets of the corporation, or any part thereof, may be deferred until determination of any such claims.

(d) Laborer's wages shall be preferred claims and entitled to payment before any other creditors out of the assets of the corporation in excess of valid prior liens or encumbrances.

§ 1511. Deposit of amount due

SOURCE:  
New

COMPARABLE PROVISIONS:

Corp. Code § 5010 (business and nonprofit corporations)\*; N.Y. Not-for-Profit Corporation Law § 1005(a)(4)\*

§ 5010. Unclaimed deposit, dividend, or debt; deposit of amount due

If there is any unclaimed deposit or dividend payable, or any debt owed, by a corporation in process of winding up or dissolution, to any person whose whereabouts is unknown to the directors, trustees, or other persons conducting the winding up, they may deposit the amount due such person with the State Treasurer or with some bank, or trust company in this State, at interest, if possible, if the deposit is made in a bank, or trust company. The deposit shall be accompanied with a statement of the name of the person entitled to the deposit, dividend, or debt, the time when the deposit was made, the dividend declared, or the debt created, and any information possessed as to the residence of the person entitled to the deposit, dividend, or debt.

§ 1005. Procedure after dissolution

(a) After dissolution:

\* \* \* \* \*

(4) Any assets distributable to a creditor or member who is unknown or cannot be found, or who is under a disability, shall be paid to the state comptroller as abandoned property within six months from the date fixed for the payment of the final liquidating distribution, and be subject to the provisions of the abandoned property law.

§ 1512. Disposition of assets

SOURCE:

New

COMPARABLE PROVISIONS:

Corp. Code §§ 9801 (nonprofit corporation)\*; 5000, 5001 (business corporation); N.Y. Not-for-Profit Corporation Law § 1005\*; Pa. Corporation Not-for-profit Code § 7967(c); ABA-ALI Model Non-Profit Corporation Act § 46(d)

§ 9801. Disposition of assets; payment of debts; distribution to members; assets held in trust; subordinate body

Upon the dissolution or winding up of a nonprofit corporation, after paying or adequately providing for the debts and obligations of the corporation, the directors or persons in charge of the liquidation shall divide any remaining assets among the members in accordance with their respective rights therein, or dispose of them in such other manner as may be provided in the articles, unless the corporation holds its assets on any trust or is organized for a charitable purpose or purposes.

If the corporation holds its assets on trust, or is organized for a charitable purpose or purposes, the assets shall be disposed of in such manner as may be directed by decree of the superior court of the county in which the corporation has its principal office, upon petition therefor by the Attorney General or any person concerned in the liquidation, in proceedings to which the Attorney General is a party.

This section does not apply where the charter of an incorporated subordinate body is surrendered to, taken away, or revoked by the head or national body.

**§ 1005. Procedure after dissolution**

(a) After dissolution:

(1) The corporation shall carry on no activities except for the purpose of winding up its affairs.

(2) The corporation shall proceed to wind up its affairs, with power to fulfill or discharge its contracts, collect its assets, sell its assets for cash at public or private sale, discharge or pay its liabilities, and do all other acts appropriate to liquidate its business.

(3) After paying or adequately providing for the payment of its liabilities, the remaining assets of the corporation shall be distributed in the following manner:

(A) Assets received and held by the corporation for a purpose specified as Type B in paragraph (b) of section 201 (Purposes) or which are legally required to be used for a particular purpose shall be distributed to one or more domestic or foreign corporations or other organizations engaged in activities substantially similar to those of the dissolved corporation pursuant to a plan of distribution adopted as provided in section 1001 (Plan of dissolution and distribution of assets) or as ordered by the court to which such plan is submitted for approval under section 1002 (Authorization of plan). Any disposition contained in any will or other instrument, in trust or otherwise, made before or after the dissolution, to or for the benefit of any corporation so dissolved shall inure to or for the benefit of the corporation or organization acquiring the assets of the dissolved corporation as provided herein, and so far as is necessary for that purpose the corporation or organization acquiring such disposition shall be deemed a successor to the dissolved corporation: provided, however, that such disposition shall be devoted by the acquiring corporation or organization to the purposes intended by the testator, donor or grantor.

(B) Other assets, if any, shall be distributed in accordance with the specifications of the plan of distribution adopted as provided in section 1001 (Plan of dissolution and distribution of assets) or, to the extent that the certificate of incorporation prescribes the distributive rights of members, or of any class or classes of members, as provided in such certificate.

(4) Any assets distributable to a creditor or member who is unknown or cannot be found, or who is under a disability, shall be paid to the state comptroller as abandoned property within six months from the date fixed for the payment of the final liquidating distribution, and be subject to the provisions of the abandoned property law.

(b) Assets shall be distributed under a plan of distribution in accordance with the following order of priorities:

- (1) Holders of certificates of subvention.
- (2) Holders of capital certificates.
- (3) Members.

§ 1513. Member's share in assets distributable to members upon dissolution

SOURCE:

New

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 1005(a)(3)(B)\*; Pa. Corporation Not-for-profit Code § 7967(c)

§ 1005. Procedure after dissolution

(a) After dissolution:

\* \* \* \* \*

(3) After paying or adequately providing for the payment of its liabilities, the remaining assets of the corporation shall be distributed in the following manner:

\* \* \* \* \*

(B) Other assets, if any, shall be distributed in accordance with the specifications of the plan of distribution adopted as provided in section 1001 (Plan of dissolution and distribution of assets) or, to the extent that the certificate of incorporation prescribes the distributive rights of members, or of any class or classes of members, as provided in such certificate.

§ 1514. Disposition to dissolved charitable corporation

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 1005(a)(3)(A)\*

§ 1005. Procedure after dissolution

(a) After dissolution:

\* \* \* \* \*

(3) After paying or adequately providing for the payment of its liabilities, the remaining assets of the corporation shall be distributed in the following manner:

(A) Assets received and held by the corporation for a purpose specified as Type B in paragraph (b) of section 201 (Purposes) or which are legally required to be used for a particular purpose shall be distributed to one or more domestic or foreign corporations or other organizations engaged in activities substantially similar to those of the dissolved corporation pursuant to a plan of distribution adopted as provided in section 1001 (Plan of dissolution and distribution of assets) or as ordered by the court to which such plan is submitted for approval under section 1002 (Authorization of plan). Any disposition contained in any will or other instrument, in trust or otherwise, made before or after



the dissolution, to or for the benefit of any corporation so dissolved shall inure to or for the benefit of the corporation or organization acquiring the assets of the dissolved corporation as provided herein, and so far as is necessary for that purpose the corporation or organization acquiring such disposition shall be deemed a successor to the dissolved corporation: provided, however, that such disposition shall be devoted by the acquiring corporation or organization to the purposes intended by the testator, donor or grantor.

§ 1515. Recovery of improper distributions from members or distributees

SOURCE:

Derived from Corp. Code § 5012 (business and nonprofit corporations)\*

**§ 5012. Recovery of improper distributions; ratable contribution; process of winding up defined.** Whenever in the process of winding up a corporation any distribution of assets has been made, otherwise than under an order of court, without prior payment or adequate provision for payment of any of the debts and liabilities of the corporation, any amount so improperly distributed to any shareholder or owner of shares may be recovered by the corporation or by its receiver, liquidator, or trustee in bankruptcy. Any of such shareholders or owners may be joined as defendants in the same action or brought in on the motion of any other defendant.

Shareholders or owners of shares who satisfy any liability under this section shall have the right of ratable contribution from other distributees similarly liable. Any shareholder or owner of shares who has been compelled to return to the corporation more than his ratable share of the amount needed to pay the debts and liabilities of the corporation may require that the corporation recover from any or all of the other distributees such proportion of the amounts received by them upon the improper distribution as to give contribution to those held liable under this section and make the distribution of the assets fair and ratable, according to the respective rights and preferences of the shares, after the payment or adequate provision for payment of all the debts and liabilities of the corporation.

As used in this section "process of winding up" includes proceedings under this chapter and also any other distribution of assets to shareholders made in contemplation of termination or abandonment of the corporate business.

§ 1516. Revocation of election; certificate of revocation

SOURCE:

Derived from Corp. Code § 4606 (business and nonprofit corporations)\*

**§ 4606.** Revocation of election; certificate of revocation; signing, verification, filing; contents. A voluntary election to wind up and dissolve may be revoked prior to distribution of any assets by the vote or written consent of shareholders or members representing no less than a majority of the voting power, or by resolution of the board of directors if the election was by the directors pursuant to Section 4601. Thereupon a certificate evidencing the revocation shall be subscribed, verified and filed in the manner prescribed by Section 4603.

The certificate shall set forth:

(a) That the corporation has revoked its election to wind up and dissolve.

(b) That no assets have been distributed pursuant to the election.

(c) If the revocation was made by the vote or written consent of shareholders or members, the number of shares or memberships voting for or consenting to the revocation and the total number of outstanding shares or memberships the holders of which were entitled to vote on or consent to the revocation.

(d) If the election and revocation was by resolution of the board of directors it shall be so stated.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law §§ 1010, 1012; Pa. Corporation Not-for-profit Code § 7966; ABA-ALI Model Non-Profit Corporation Act § 48

§ 1517. Action to suspend or annul dissolution

SOURCE:

New

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 1008(a)(1)\*

**§ 1008.** Jurisdiction of supreme court to supervise dissolution and liquidation

(a) At any time after the filing of a certificate of dissolution under this article, the supreme court in the judicial district where the office of the corporation was located at the date of its dissolution, in a special proceeding instituted under this section upon the petition of the corporation or, in a situation approved by the court, upon the petition of a creditor, claimant, director,

officer, member, subscriber for capital certificates, incorporator or the attorney-general, may suspend or annul the dissolution or continue the liquidation of the corporation under the supervision of the court and may make all such orders as it may deem proper in all matters in connection with the dissolution or the winding up of the affairs of the corporation, and in particular, and without limiting the generality of the foregoing, in respect of the following:

(1) The determination of the validity of the authorization of the dissolution of the corporation and of the execution and delivery of the certificate of dissolution under this article.

**§ 1518. Certificate of final windup and dissolution**

**SOURCE:**

Derived from Corp. Code § 5200 (business and nonprofit corporations)\*

**§ 5200. Certificate of winding up and dissolution; verification; contents**

When a corporation has been completely wound up without court proceedings therefor, a majority of the authorized number of directors or trustees shall sign a certificate of winding up and dissolution which shall be verified by their affidavit stating, in effect, that the matters set forth in the certificate are true of their own knowledge. The certificate shall state:

(a) That the corporation has been completely wound up.

(b) Whether its known debts and liabilities have been actually paid, or adequately provided for, or paid as far as its assets permitted, or that it has incurred no known debts or liabilities, as the case may be. If there are known debts and liabilities for payment of which adequate provision has been made, the certificate shall state what provision has been made, setting forth the name and address of the corporation, person, or governmental agency that has assumed or guaranteed the payment, or the name and address of the depository with which deposit has been made, or such other information as may be necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability.

(c) Whether its known assets have been distributed to shareholders or members, or wholly applied on account of its debts and liabilities, or that it acquired no known assets, or, in the case of a nonprofit corporation, distributed in accordance with its articles or court decree, as the case may be.

**COMPARABLE PROVISIONS:**

Pa. Corporation Not-for-profit Code § 7969; ABA-ALI Model Non-Profit Corporation Act § 49

**§ 1519. Court order of final windup and dissolution; filing; officer's and director's liability**

**SOURCE:**

Derived in part from Corp. Code §§ 5202, 5203 (business and nonprofit corporations)\*

**§ 5202. Petition for order of winding up and dissolution; order to show cause; publication.** If the winding up has been accomplished without court proceedings, the directors or trustees, in lieu of filing the certificate of winding up and dissolution, may petition the superior court of the county in which the principal office of the corporation is located for an order declaring the corporation duly wound up

and dissolved. Such petition shall be filed in the name of the corporation.

Upon the filing of the petition the court shall make an order requiring all persons interested to show cause why an order should not be made declaring the corporation duly wound up and dissolved, and shall direct that the order be served by publication of a copy thereof in a newspaper of general circulation in the county in which the principal office of the corporation is located, or if there is no such newspaper, in such newspaper as may be designated by the court, once a week for a period of two consecutive months.

**§ 5203.** Who may contest petition. Any persons claiming to be interested as shareholders, creditors, or otherwise may appear in the proceeding at any time before the expiration of 30 days from the completion of publication of the order to show cause, and contest the petition.

**§ 1520. Assets omitted from winding up**

**SOURCE:**

Subdivision (a) is the same as Corp. Code § 5402 (business and nonprofit corporations)\*; subdivision (b) is new.

**§ 5402.** Assets omitted from winding up; distribution. Any assets inadvertently or otherwise omitted from the winding up continue in the dissolved corporation for the benefit of the persons entitled thereto upon dissolution of the corporation, and on realization shall be distributed accordingly.

**COMPARABLE PROVISIONS:**

Pa. Corporation Not-for-profit Code § 7971(b)\*

**§ 7971. Survival of remedies and rights after dissolution**

\* \* \* \* \*

(b) Rights and assets.—The dissolution of a nonprofit corporation shall not take away or impair any property right, tangible or intangible, including any right of action, of such corporation. Should any such property right be discovered after the dissolution of the corporation, the surviving member or members of the board of directors or other body which wound up the affairs of the corporation, or a receiver appointed by the court, shall have authority

to enforce such property right and to collect and divide the assets so discovered among the persons entitled thereto and to prosecute actions in the corporate name of the corporation. Any assets so collected shall be distributed and disposed of in accordance with the applicable decree of court, if any, otherwise in accordance with this subchapter.

## Article 2. Involuntary Dissolution

### § 1601. Action for involuntary dissolution; plaintiffs

#### SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 1102\*

### § 1102. Judicial dissolution; petition by directors or members; petition in case of deadlock among directors or members

(a) A petition for the judicial dissolution of a corporation may be presented:

(1) By a majority of the directors then in office, or by the members, or such of them as are designated for such purpose, when authorized to do so by a resolution adopted by majority vote as provided in paragraph (c) of section 613 (Vote of members) (provided that, notwithstanding any provision of the certificate of incorporation or the by-laws, a members' meeting to consider such a resolution may be called, no more often than once in any period of twelve consecutive months, by ten percent of the members entitled to vote thereon or by such lesser percentage or number of members as may be provided in the certificate of incorporation or by-laws), in the following cases:

(A) The assets of the corporation are not sufficient to discharge its liabilities.

(B) Dissolution will be beneficial to the members.

(2) By ten percent of the total number of members or by any director, in the following cases:

(A) The directors are so divided respecting the management of the corporation's affairs that the votes required for action by the board cannot be obtained.

(B) The members are so divided that the votes required for the election of directors cannot be obtained.

(C) There is internal dissension and two or more factions of members are so divided that dissolution would be beneficial to the members.

(D) The directors or members in control of the corporation have looted or wasted the corporate assets, have perpetuated the corporation solely for their personal benefit, or have otherwise acted in an illegal, oppressive or fraudulent manner.

- (E) The corporation is no longer able to carry out its purposes.
- (b) In any proceeding for judicial dissolution the attorney-general shall be a necessary party.

COMPARABLE PROVISIONS:

Corp. Code § 4650 (business and nonprofit corporations)\*; Pa. Corporation Not-for-profit Code § 7981; ABA-ALI Model Non-Profit Corporation Act § 54.

4650. A complaint for involuntary winding up or dissolution of a corporation other than one subject to the Bank Act, the Public Utilities Act, the Building and Loan Association Act, or Article 14 (commencing with Section 1010) of Chapter 1 of Part 2 of Division 1 of the Insurance Code may be filed in the superior court of the county in which the principal office is located by the persons described in any of the following subdivisions:

- (a) One-half of the directors.
- (b) A shareholder or shareholders who have been record holders for a period of not less than six months and who hold not less than 33 $\frac{1}{3}$  percent of the number of outstanding shares, exclusive of shares owned by persons who are alleged in the complaint and subsequently found by the court to have personally participated in any of the transactions enumerated in subdivision (e) of Section 4651.
- (c) Any shareholder if the reason for dissolution is that the period for which the corporation was formed has terminated without extension thereof.

§ 1602. Grounds for dissolution

SOURCE:

Derived from Corp. Code § 4651 (business and nonprofit corporations)\*

**§ 4651. Verified complaint; contents; grounds for action.** The court, upon filing of a verified complaint, may entertain proceedings for the involuntary winding up or dissolution of such a corporation, when it is shown that any one or more of the following reasons exist:

- (a) The corporation has abandoned its business for more than one year.
- (b) The corporation has an even number of directors who are equally divided and cannot agree as to the management of its affairs, so that its business cannot longer be conducted to advantage or so that there is danger that its property and business will be impaired and lost.
- (c) The holders of the voting shares of the corporation are so divided into factions that they cannot agree upon or elect a board of directors consisting of an uneven number.

(d) There is internal dissension and two or more factions of shareholders in the corporation are so deadlocked that its business cannot longer be conducted with advantage to its shareholders.

(e) The directors or those in control of the corporation have been guilty of persistent fraud, mismanagement, or abuse of authority, or persistent unfairness toward minority shareholders, or its property is being misapplied, wasted, or lost by its directors or officers.

(f) The liquidation is reasonably necessary for the protection of the rights or interests of any substantial number of the shareholders, or of the complaining shareholders.

(g) The period for which the corporation was formed has terminated without extension of such period.

**COMPARABLE PROVISIONS:**

N.Y. Not-for-Profit Corporation Law § 1102\*; Pa. Corporation Not-for-profit Code § 7981; ABA-ALI Model Non-Profit Corporation Act § 54

**§ 1102. Judicial dissolution; petition by directors or members; petition in case of deadlock among directors or members**

(a) A petition for the judicial dissolution of a corporation may be presented:

(1) By a majority of the directors then in office, or by the members, or such of them as are designated for such purpose when authorized to do so by a resolution adopted by majority vote as provided in paragraph (c) of section 613 (Vote of members) (provided that, notwithstanding any provision of the certificate of incorporation or the by-laws, a members' meeting to consider such a resolution may be called, no more often than once in any period of twelve consecutive months, by ten percent of the members entitled to vote thereon or by such lesser percentage or number of members as may be provided in the certificate of incorporation or by-laws), in the following cases:

(A) The assets of the corporation are not sufficient to discharge its liabilities.

(B) Dissolution will be beneficial to the members.

(2) By ten percent of the total number of members or by any director, in the following cases:

(A) The directors are so divided respecting the management of the corporation's affairs that the votes required for action by the board cannot be obtained.

(B) The members are so divided that the votes required for the election of directors cannot be obtained.

(C) There is internal dissension and two or more factions of members are so divided that dissolution would be beneficial to the members.

(D) The directors or members in control of the corporation have looted or wasted the corporate assets, have perpetuated the corporation solely for their personal benefit, or have otherwise acted in an illegal, oppressive or fraudulent manner.

(E) The corporation is no longer able to carry out its purposes.

(b) In any proceeding for judicial dissolution the attorney-general shall be a necessary party.

#### § 1603. Grounds for action brought by Attorney General

**SOURCE:**

Derived from Corp. Code §§ 4690, 4691 (business and nonprofit corporations)\*

4690. The Attorney General may bring an action against any corporation or purported corporation, in the name of the people of this state upon his own information, or upon complaint of a private party, to procure a judgment dissolving the corporation and annulling, vacating, or forfeiting its corporate existence upon any of the following grounds:

(a) The corporation has seriously offended against any provision of the statutes regulating corporations.

(b) The corporation fraudulently has abused or usurped corporate privileges or powers.

(c) The corporation has violated any provision of law by any act or default which under the law is a ground of forfeiture of corporate existence.

(d) The corporation has failed to pay to the Franchise Tax Board for a period of five years any tax imposed upon it by the Bank and Corporation Tax Law.

**§ 4691. Notice to correct violation or deficiency; condition precedent to action.** However, if the cause of action is a matter or act which the corporation has done or omitted to do that can be corrected by amendment of its articles or by other corporate action, such suit shall not be maintained unless (a) the Attorney General, at least 30 days prior to the institution of suit, has given the corporation written notice of the matter or act done or omitted to be done, and (b) the corporation has failed, neglected, or refused to institute proceedings to correct it within the 30-day period or thereafter fails to prosecute such proceedings.



COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 1101; Pa. Corporation Not-for-profit Code § 7990\*; ABA-ALI Model Non-Profit Corporation Act § 51

**§ 7990. Actions to revoke corporate franchises**

(a) **General rule.**—The Attorney General may institute proceedings to revoke the articles and franchises of a nonprofit corporation if it:

- (1) misused or failed to use its powers, privileges or franchises;
- (2) procured its articles by fraud; or
- (3) should not have been incorporated under the statutory authority relied upon.

(b) **Powers of court.**—In every action instituted under subsection (a) of this section the court shall have power to wind up the affairs of and to dissolve the corporation in the manner provided in this subchapter.

§ 1604. Service; intervention

SOURCE:

Subdivision (a) is the same as Corp. Code § 4652 (business and nonprofit corporations)\*; subdivision (b) is the same in substance as Corp. Code § 4653 (business and nonprofit corporations)\*.

**§ 4652. Issuance and service of summons.** Upon the filing of a verified complaint for involuntary winding up or dissolution of a corporation a summons shall be issued and served on the corporation as in other civil actions.

4653. At any time prior to the trial of the action, any ~~shareholder~~ member or creditor may intervene ~~therein~~ in the action.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 1104; ABA-ALI Model Non-Profit Corporation Act § 53

§ 1605. Appointment of receiver

SOURCE:

Corp. Code § 4656 (business and nonprofit corporations)(substantially the same)\*

**§ 4656. Appointment of receiver; notice and hearing; security.**  
~~If at the time of the filing of a complaint for involuntary dissolution~~

~~or at any time thereafter~~, after the filing of a complaint under this article, the court has reasonable grounds to be-

lieve that unless a receiver of the corporation is appointed the interests of the corporation and its shareholders will suffer pending the hearing and determination of the complaint, upon the application of the plaintiff, the Attorney General or any party and after a hearing upon such notice to the corporation as the court may direct and upon notice and a hearing and the giving of security pursuant to

Sections 566 and 567 of the Code of Civil Procedure, the court may appoint a receiver to take over and manage the business and affairs of the corporation and to preserve its property pending the hearing and determination of the complaint ~~for dissolution~~.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 1111; Pa. Corporation Not-for-profit Code § 7984; ABA-ALI Model Non-Profit Corporation Act § 56

§ 1606. Authority of court to grant relief

SOURCE:

Derived from Corp. Code §§ 4657, 4692 (business and nonprofit corporations)\*

§ 4657. Order for winding up and dissolution. After hearing the court may decree a winding up and dissolution of the corporation if cause therefor is shown, or, with or without winding up and dissolution, may make such orders and decrees and issue such injunctions in the cause as justice and equity require.

MEMBERS'  
ACTION

§ 4692. Authority of court. In any such action, the court may order dissolution or such other or partial relief as it deems just and expedient. The court also may appoint a receiver for winding up the affairs of the corporation, or may order that the corporation be wound up by its board of directors subject to the supervision of the court and to its power to make orders as in case of voluntary dissolution and winding up.

ATTORNEY  
GENERAL'S  
ACTION

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 1109; ABA-ALI Model Non-Profit Corporation Act § 55

§ 1607. Supervision of the court

SOURCE:

Derived from Corp. Code § 4654 (business and nonprofit corporations)\*

§ 4654. Jurisdiction; venue. The superior court of the county in which the principal office of the corporation is located shall have jurisdiction of an action for involuntary winding up or dissolution of the corporation, and may make such orders for winding up and dissolution of the corporation as justice and equity require, including orders providing for the presentation of claims of creditors and the barring from participation of creditors and claimants failing to make claims and present proofs as required, as in case of proceedings for voluntary winding up and dissolution.

COMPARABLE PROVISIONS:

Pa. Corporation Not-for-profit Code § 7987; ABA-ALI Model Non-Profit Corporation Act § 55

§ 1608. Time of commencement of proceedings; effect; notice

SOURCE:

Subdivision (a) is the same in substance as Corp. Code § 4660 (business and nonprofit corporations)\*; subdivision (b) is the same in substance as part of Corp. Code § 4661 (business and nonprofit corporations)\*; subdivision (c) is new.

§ 4660. Time of commencement of proceedings. Involuntary proceedings for winding up a corporation are deemed to commence when the order ~~for~~ requiring the corporation to winding wind up and dissolve is entered.

§ 4661. Cessation of business; notice of commencement of proceedings. When an involuntary proceeding for winding up has commenced, the corporation shall cease to carry on ~~business~~ except to activities the extent necessary for the ~~beneficial-winding-up-thereof~~ successful winding up of those activities or the preservation of the value of the corporation's assets pending sale or other disposition. The di-

rectors shall cause written notice of the commencement of the proceeding for involuntary winding up or dissolution to be given by mail to all shareholders and to all known creditors and claimants whose addresses appear on the records of the corporation, unless the order for winding up has been stayed by appeal therefrom or otherwise, or the proceeding or the execution of the order has been enjoined.

§ 1609. Provisional director

SOURCE:

Corp. Code § 4655 (business and nonprofit corporations) (substantially the same)\*

§ 4655. Appointment of provisional director; deadlocked board. In case of a deadlock in the board of directors as set forth in subdivision (b) of Section ~~4654~~ 1602, notwithstanding any provisions of the articles or by-laws of the corporation the court may, in an action for ~~an involuntary winding up and dissolution of the corporation~~, appoint a provisional director. The provisions of subdivision (b) of Section ~~815~~ 815.5 apply to any such provisional director so appointed.

§ 1610. Applicability of voluntary dissolution provisions

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 1115\*

**§ 1115. Applicability of other provisions**

(a) Subject to the provisions of this article, the provisions of section 1005 (Procedure after dissolution), 1006 (Corporate action and survival of remedies after dissolution), 1007 (Notice to creditors: filing or barring claims) and 1008 (Jurisdiction of supreme court to supervise dissolution and liquidation) shall apply to a corporation dissolved under this article.

(b) Any orders provided for in section 1008, may be made at any stage of an action or special proceeding for dissolution of a corporation under this article, and if the corporation is dissolved under this article, the court may retain jurisdiction for the purpose of making such orders, after the dissolution, in such action or special proceeding. The court may also make such orders in separate special proceedings, as provided in section 1008.

(c) Notice to creditors and claimants, provided for in section 1007, may also be given, by order of the court, at any stage of an action or special proceeding for dissolution of a corporation under this article.

COMPARABLE PROVISIONS:

Corp. Code §§ 4802, 4803 (business and nonprofit corporations)\*

**§ 4802. Function of directors in involuntary proceedings; court supervision; powers and duties.** When involuntary proceedings for winding up or dissolution of a corporation have been commenced, the board of directors shall conduct the winding up of the affairs of the corporation, subject to the supervision of the court and the power to make orders, as in case of voluntary winding up unless other persons are appointed by the court, on good cause shown, to conduct the winding up.

The directors or such other persons shall have the same powers, duties, and general authority as the directors in case of voluntary winding up and dissolution, and, subject to any restrictions imposed by the court, may exercise all their powers through the executive officers without any order of court.

**§ 4803. Filling vacancy in board.** A vacancy occurring in the office of director by death, resignation, failure or inability to act, or otherwise, during voluntary or involuntary dissolution or winding up of a corporation, may be filled by the vote or written consent of the

holders of shares representing a majority of the voting power. Until such action by shareholders a majority of the remaining directors, though less than a quorum, may fill the vacancy; but at any time thereafter the person so appointed may be removed and his successor elected by the vote of the holders of shares representing a majority of the voting power.

§ 1611. Discontinuance

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law § 1114\*

**§ 1114. Discontinuance of action or special proceeding**

An action or special proceeding for the dissolution of a corporation may be discontinued at any stage when it is established that the cause for dissolution did not exist or no longer exists. In such event, the court shall dismiss the action or special proceeding and direct any receiver to redeliver to the corporation all its remaining property.

COMPARABLE PROVISIONS:

ABA-ALI Model Non-Profit Corporation Act § 58

CHAPTER 9. FOREIGN CORPORATIONS

Article 1. General Provisions

§ 1701. "Conducting intrastate activities"

SOURCE:

Derived from ABA-ALI Model Non-Profit Corporation Act § 63\*

**SECTION 63. ADMISSION OF FOREIGN CORPORATION**

No foreign corporation shall have the right to conduct affairs in this State until it shall have procured a certificate of authority so to do from the Secretary of State. No foreign corporation shall be entitled to procure a certificate of authority under this Act to conduct in this State any affairs which a corporation organized under this Act is prohibited from conducting. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country 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.

Without excluding other activities which may not constitute conducting affairs in this State, a foreign corporation shall not be considered to be conducting affairs in this State, for the purposes of this Act, by reason of carrying on in this State any one or more of the following activities:

(a) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

(b) Holding meetings of its directors or members or carrying on other activities concerning its internal affairs.

(c) Maintaining bank accounts.

(d) Creating evidences of debt, mortgages or liens on real or personal property.

(e) Securing or collecting debts due to it or enforcing any rights in property securing the same.

(f) Conducting its affairs in interstate commerce.

(g) Granting funds.

(h) Distributing information to its members.

(i) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

**COMPARABLE PROVISIONS:**

Corp. Code § 6203 (business and nonprofit corporations)\*; N.Y. Not-for-Profit Corporation Law § 1301\*; Pa. Corporation Not-for-profit Code § 8122

**§ 6203. Transact intrastate business.** "Transact intrastate business" means entering into repeated and successive transactions of its business in this State, other than interstate or foreign commerce.

**§ 1301. Authorization of foreign corporations**

(a) A foreign corporation shall not conduct activities in this state until it has been authorized to do so as provided in this article. A foreign corporation may be authorized to conduct in this state any activities which may be conducted lawfully in this state by a domestic corporation, to the extent that it is authorized

to conduct such activities in the jurisdiction of its incorporation, but no other activities.

(b) Without excluding other acts which may not constitute conducting activities in this state, a foreign corporation shall not be considered to be conducting activities in this state, for the purposes of this chapter, by reason of doing in this state any one or more of the following acts:

(1) Maintaining or defending any action or proceeding, whether judicial, administrative, arbitral or otherwise, or effecting settlement thereof or the settlement of claims or disputes.

(2) Holding meetings of its directors or its members.

(3) Maintaining bank accounts.

(4) Maintaining offices or agencies only for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.

(5) Granting funds.

(6) Distributing information to its members.

(c) The specification in paragraph (b) does not establish a standard for activities which may subject a foreign corporation to service of process under this chapter or any other statute of this state.

## § 1702. Application of other provisions

### SOURCE:

New

### COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 1320\*; Pa. Corporation Not-for-profit Code § 8145

## § 1320. Applicability of other provisions

(a) In addition to articles 1 (Short title; definitions; application; certificates; miscellaneous) and 3 (Corporate name and service of process) and the other sections of article 13, the following provisions, to the extent provided therein, shall apply to a foreign corporation conducting activities in this state, its directors, officers and members:

(1) Section 623 (Members' derivative action brought in the right of the corporation to procure a judgment in its favor).

(2) Sections 721 (Exclusivity of statutory provisions for indemnification of directors and officers) through 727 (Insurance for indemnification of directors and officers), inclusive.

(3) Section 906 (Merger or consolidation of domestic and foreign corporations).



§ 1703. Liability of directors and officers

SOURCE:

New

COMPARABLE PROVISIONS:

Corp. Code §§ 6601, 6804 (business and nonprofit corporations)\*; N.Y. Not-for-Profit Corporation Law § 1321; Pa. Corporation Not-for-profit Code § 8145\*

**§ 6601. Liabilities of directors; enforcement.** The directors of a foreign corporation transacting business in this State are liable to the corporation, its shareholders, creditors, receiver, liquidator, or trustee in bankruptcy for the making of unauthorized dividends, purchases of its shares, or distributions of assets, or false certificates, reports or public notices or other violations of official duty, according to the laws of the State or place of incorporation, whether committed or done in this State or elsewhere. Such liabilities may be enforced in the courts of this State.

**§ 6804. Foreign incorporation as defense to prosecution for violation.** In a prosecution for a violation of Section 1307, 1309, 1511, 3019, 3020, 3021, or 3022, the fact that the corporation was a foreign corporation is not a defense, if it was carrying on business or keeping an office therefor within this State.

**§ 8145. Applicability of certain safeguards to foreign corporations**

(a) **Application.**—This section shall be applicable to any qualified or nonqualified foreign corporation:

(1) which derived more than one-half of its revenues for the preceding three fiscal years, or such portion thereof as the corporation was in existence, from sources within this Commonwealth and was at any time during such period doing business within this Commonwealth on the basis of the most minimal contacts with this Commonwealth permitted under the Constitution of the United States; or

(2) at least a majority of the bona fide members of which are residents of this Commonwealth.

(b) **Internal affairs doctrine not applicable.**—The General Assembly hereby finds and determines that the foreign corporations to which this section applies substantially affect this Commonwealth. No court of this Commonwealth shall hereafter dismiss

or stay any action or proceeding by a member, director, officer or agent of such a corporation, as such, against such corporation or any one or more of the members, directors, officers or agents thereof, as such, on the ground that such corporation is a foreign corporation or that the cause of action relates to the internal affairs thereof, but every such action shall proceed with like effect as if such corporation were a domestic corporation. Except as provided in subsection (c) of this section, the court having jurisdiction of the action or proceeding shall apply the law of the jurisdiction under which the foreign corporation was incorporated.

(c) **Minimum safeguards.**—The following provisions of this part shall be applicable to foreign corporations to which this section applies, except that nothing in this subsection shall require the filing of any document in the Department of State as a prerequisite to the validity of any corporate action or the doing of any corporate action by the foreign corporation which is impossible under the laws of its domiciliary jurisdiction:

- (1) Section 7504(b) (relating to adoption and content of by-laws).
- (2) Section 7508 (relating to corporate records; inspection).
- (3) Section 7555 (relating to annual report of directors or other body).
- (4) Section 7743 (relating to mandatory indemnification).
- (5) Section 7755 (relating to time of holding meetings of members).
- (6) Section 7758(e) (relating to voting lists).
- (7) Section 7759(b) (relating to minimum requirements).
- (8) Section 7762 (relating to judges of election).
- (9) Section 7764 (relating to appointment of custodian of corporation on deadlock or other cause).
- (10) Section 7767(b) (relating to expulsion).
- (11) Subchapter E of Chapter 77<sup>1</sup> (relating to judicial supervision of corporate action).
- (12) Chapter 79<sup>2</sup> (relating to fundamental changes).

For the purposes of this subsection, corporate action shall not be deemed to be impossible under the laws of the domiciliary jurisdiction of a foreign corporation merely because prohibited or restricted by the terms of the articles, certificate of incorporation, bylaws or other organic law of the corporation, but the court may require the corporation to amend such organic law so as to be consistent with the minimum safeguards prescribed by this subsection.

(d) **Section exclusive.**—No provision of this article, other than the provisions of this section, shall be construed to regulate the incorporation or internal affairs of a foreign corporation.

§ 1704. Misleading or deceptive corporate name

SOURCE:

Derived from Corp. Code § 6404 (business and nonprofit corporations)\*

6404. No foreign corporation having a name which is likely to mislead the public or which is the same as, or resembles so closely as to tend to deceive, (a) the name of a domestic corporation, (b) the name of a foreign corporation which is authorized to transact business in this state, or (c) a name which is under reservation for a proposed corporation, shall transact business in this state or qualify to do so by complying with the provisions of this chapter, nor file with the Secretary of State a copy of any document by which any such name is adopted, unless and until either: (i) it obtains an order from a court of competent jurisdiction permanently restraining the other corporation from doing business in this state under that name and it files with the Secretary of State a copy of the order of court, duly certified by the clerk of the court; or (ii) the Secretary of State finds, upon proof by affidavit or otherwise as he may determine, that the business to be conducted in this state by said foreign corporation is not the same as or similar to the business being conducted by the corporation (or to be conducted by the proposed corporation) with whose name it may conflict and that the public is not likely to be deceived, and said foreign corporation agrees that it will add to its corporate name some distinguishing word or words acceptable to the Secretary of State and that it will use (and the corporation shall in fact use) the corporate name with such addition in all of its dealings with the Secretary of State and in the conduct of its affairs in this state.

COMPARABLE PROVISIONS:

Pa. Corporation Not-for-profit Code § 8123; ABA-ALI Model Non-Profit Corporation Act § 65

§ 1705. Articles as evidence

SOURCE:

Corp. Code § 6600 (business and nonprofit corporations)(same in substance)\*

§ 6600. Articles or certificate of incorporation as evidence

(a) In any action or proceeding, civil or criminal, in any court of this State, a copy of the articles ~~or certificate of incorporation~~ or other incorporation papers of a foreign corporation purporting to be duly certified by the Secretary of State or other competent official of the State or place under the laws of which the corporation purports to be incorporated, or the original of any such instrument, or a copy of such certified copy duly certified, is admissible in evidence by all courts, and is prima facie evidence of the incorporation, existence, and powers of the corporation.

(b) Certified copies of ~~such~~ the instruments referred to in subdivision (a) may be filed in the county clerk's office in

the county where the foreign corporation held or holds real property and, when so filed, are conclusive evidence of the incorporation and powers of the corporation in favor of any bona fide purchaser or encumbrancer of such property for value,

whether or not the corporation is doing business in this State has qualified to conduct intrastate activities .

§ 1706. Judicial notice of official acts

SOURCE:

Corp. Code § 6602 (business and nonprofit corporations)(same)\*

6602. In any action or proceeding, the court takes judicial notice, in the same manner that it takes judicial notice of the matters listed in Section 452 of the Evidence Code, of the official acts affecting corporations of the legislative, executive, and judicial departments of the state or place under the laws of which the corporation purports to be incorporated.

Article 2. Qualification to Conduct Intrastate Activities

§ 1751. Qualification of foreign corporations

SOURCE:

Subdivision (a) is derived from the first paragraph of Corp. Code § 6403 (business and nonprofit corporations)\*; subdivision (b) is derived from N.Y. Not-for-Profit Corporation Law § 1301(a)\*.

6403. A foreign corporation shall not transact intrastate business in this state without having first obtained from the Secretary of State a certificate of qualification. To obtain such certificate, the corporation shall file with the Secretary of State, on a form prescribed by him, a statement and designation in its corporate name, signed by its president, or a vice president, or its secretary or assistant secretary, or its treasurer, which shall set forth all of the following:

- (a) Its name and the state or country of its incorporation.
- (b) The location and address of its main office.
- (c) The location and address of its principal office within this state.

(d) The specific business it proposes to transact in this state.

(e) The name of an agent upon whom process directed to the corporation may be served within this state. The agent may be a natural person residing within the state in which case his complete business or residence address shall be set forth, or it may be a domestic corporation which has filed the certificate provided for in Section 3301.5 or a foreign corporation which has filed the certificate provided for in Section 6403.5. If a corporate agent be designated, the statement shall set forth the state or place under the laws of which such agent was incorporated and the name of the city, town or village wherein it has the office at which the corporation designating it as such agent may be served, as set forth in the certificate filed by such corporate agent pursuant to Section 3301.5, 3301.6, 6403.5 or 6403.6.

(f) Its irrevocable consent to service of process directed to it upon the agent designated, and to service of process on the Secretary of State if the agent so designated or the agent's successor is no longer authorized to act or cannot be found at the address given.

Annexed to such statement and designation shall be a certificate by the public officer of the state or country having custody of the original articles or certificate of incorporation or of the act creating such corporation, or by a public officer authorized by the laws of such state or country to make such certificate, to the effect that such corporation is an existing corporation in good standing in the state or country of its incorporation.

### § 1301. Authorization of foreign corporations

(a) A foreign corporation shall not conduct activities in this state until it has been authorized to do so as provided in this article. A foreign corporation may be authorized to conduct in this state any activities which may be conducted lawfully in this state by a domestic corporation, to the extent that it is authorized to conduct such activities in the jurisdiction of its incorporation, but no other activities.

#### COMPARABLE PROVISIONS:

Pa. Corporation Not-for-profit Code § 8121; ABA-ALI Model Non-Profit Corporation Act § 63

### § 1752. Certificate of qualification

#### SOURCE:

Derived from part of Corp. Code § 6403 (business and nonprofit corporations)\*

6403. A foreign corporation shall not transact intrastate business in this state without having first obtained from the Secretary of State a certificate of qualification. To obtain such certificate, the corporation shall file with the Secretary of State, on a form prescribed by him, a statement and designation in its corporate name, signed by its president, or a vice president, or its secretary or assistant secretary, or its treasurer, which shall set forth all of the following:

- (a) Its name and the state or country of its incorporation.
- (b) The location and address of its main office.
- (c) The location and address of its principal office within this state.
- (d) The specific business it proposes to transact in this state.

(e) The name of an agent upon whom process directed to the corporation may be served within this state. The agent may be a natural person residing within the state in which case his complete business or residence address shall be set forth, or it may be a domestic corporation which has filed the certificate provided for in Section 3301.5 or a foreign corporation which has filed the certificate provided for in Section 6403.5. If a corporate agent be designated, the statement shall

set forth the state or place under the laws of which such agent was incorporated and the name of the city, town or village wherein it has the office at which the corporation designating it as such agent may be served, as set forth in the certificate filed by such corporate agent pursuant to Section 3301.5, 3301.6, 6403.5 or 6403.6.

(f) Its irrevocable consent to service of process directed to it upon the agent designated, and to service of process on the Secretary of State if the agent so designated or the agent's successor is no longer authorized to act or cannot be found at the address given.

Annexed to such statement and designation shall be a certificate by the public officer of the state or country having custody of the original articles or certificate of incorporation or of the act creating such corporation, or by a public officer authorized by the laws of such state or country to make such certificate, to the effect that such corporation is an existing corporation in good standing in the state or country of its incorporation.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 1304; Pa. Corporation Not-for-profit Code § 8124; ABA-ALI Model Non-Profit Corporation Act § 67

§ 1753. Filing statement and designation; issuance of certificate of qualification

SOURCE:

Corp. Code § 6403.1 (business and nonprofit corporations) (substantially the same)\*

6403.1. Upon payment of the fees required by law the Secretary of State shall file the statement and designation prescribed in Section 6403 and shall issue to the corporation a certificate of qualification stating the date of filing of said statement and designation and that the corporation is qualified to ~~transact intrastate business~~ in this state, subject, however, to any licensing requirements otherwise imposed by this state.

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COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 1305; Pa. Corporation Not-for-profit Code § 8125; ABA-ALI Model Non-Profit Corporation Act § 68

§ 1754. Existing qualified corporations

SOURCE:

Derived from Corp. Code § 6403.2\*

§ 6403.2 Existing qualified corporations; continuance of authority

Every corporation which, at the time this section takes effect, has qualified to transact intrastate business in this State shall continue to have such authority.

COMPARABLE PROVISIONS:

Pa. Corporation Not-for-profit Code § 8121(b)

§ 1755. Filing amended statement and designation required; when certain changes occur

SOURCE:

Derived from Corp. Code § 6403.3 (business and nonprofit corporations)(substantially the same)\*

6403.3. (a) If any foreign corporation qualified to ~~transact intrastate business~~ shall change its name, the location or address of its main office, the location or address of its principal office in this state, the specific ~~business~~ to be transacted in this state, its agent for the service of process, or if the stated address of any natural person designated as agent for the service of process shall be changed, or the city, town or village wherein any designated corporate agent may be served is changed, it shall file with the Secretary of State, on a form prescribed by him, an amended statement and designation setting forth the change or changes made. In the case of a change of name the amended statement and designation shall set forth the name relinquished as well as the new name assumed and there shall be annexed to the amended statement and designation a certificate of the public officer having custody of the original corporation documents in the state or place of incorporation to the effect that such change of name was made in accordance with the laws of the state or place of incorporation.

conduct intrastate activities changes

activities

(b) If the change includes a change of name, or a change affecting a fictitious name pursuant to Section 6404, upon the filing of the amended statement and designation the Secretary of State shall issue a new certificate of qualification.

paragraph (2) of subdivision (d) of Section 1704,

(c) If the corporation originally was qualified to transact intrastate business in California prior to ~~September 18, 1950,~~ and if a specific business has not been set forth in an amended statement and designation filed on or subsequent to that date, then such information shall be set forth in the amended statement and designation being filed.

the operative date of this code

§ 1756. Certificate of surrender of authority

SOURCE:

Corp. Code § 6700 (business and nonprofit corporations)(substantially the same)\*

6700. A foreign corporation which has qualified to ~~transact intrastate business~~ in this state may surrender its right to engage in such business within this state by filing in the office of the Secretary of State a certificate signed and acknowledged by ~~its president or a vice president and its secretary or an assistant secretary or treasurer,~~ setting forth all of the following:

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its chief officer or any two subordinate officers,

(a) The name of the corporation as shown on the records of the Secretary of State, and the state or place of incorporation.

(b) That it revokes its designation of agent for the service of process.

(c) That it surrenders its authority to ~~transact intrastate business in this state.~~

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(d) That it consents that process against it in any action upon any liability or obligation incurred within this state prior to the filing of the certificate of withdrawal may be served upon the Secretary of State.

(e) A post office address to which the Secretary of State may mail a copy of any process against the corporation that is served upon him, which address may be changed from time to time by filing a certificate entitled "certificate of change of address of surrendered foreign corporation" signed and acknowledged by ~~the president, a vice president, secretary, assistant secretary or treasurer.~~ If the name of the corporation has been changed since the filing of its certificate of surrender of authority, the certificate of change of address shall set forth such new name as well as the name appearing on the certificate of surrender of authority.

an officer of the corporation.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 1311; Pa. Corporation Not-for-profit Code § 8129; ABA-ALI Model Non-Profit Corporation Act § 76

§ 1757. Effect of surrender on pending actions; revocation of appointment of designated agent

SOURCE:

Corp. Code § 6701 (business and nonprofit corporations)(substantially the same)\*

§ 6701. Effect of surrender on pending actions; revocation of appointment of designated agent. The surrender of right to ~~transact business~~ conduct intrastate activities in this state does not affect any action pending at the time. Mere retirement from ~~transacting-business~~ conducting intrastate activities within this state without filing a certificate of withdrawal surrender of authority does not revoke the appointment of any agent for the service of process within this state.

§ 1758. Attorney General's action to annul or enjoin the certificate of qualification

SOURCE:

Derived from N.Y. Not-for-Profit Corporation Law §§ 112(a)(6)\*, 1303\*

§ 112. Actions or special proceedings by attorney-general

(a) The attorney-general may maintain an action or special proceeding:

\* \* \* \* \*

(6) To restrain a foreign corporation or to annul its authority to carry on activities in this state under section 1303 (Violations).



**§ 1303. Violations**

The attorney-general may bring an action to restrain a foreign corporation from conducting in this state without authority any activities for the conduct of which it is required to be authorized in the state, or from conducting in this state any activities not set forth in its application for authority or certificate of amendment filed by the department of state. The attorney-general may bring an action or special proceeding to annul the authority of a foreign corporation to conduct in this state any activities not set forth in its application for authority or certificate of amendment or the authority of which was obtained through fraudulent misrepresentation or concealment of a material fact or to enjoin or annul the authority of any foreign corporation which within this state contrary to law has done or omitted any act which if done by a domestic corporation would be a cause for its dissolution under section 1101 (Attorney-general's action for judicial dissolution). The attorney-general shall deliver a certified copy of the order of annulment to the department of state. Upon the filing thereof by the department of state the authority of the foreign corporation to conduct activities in this state shall be annulled. The secretary of state shall continue as agent of the foreign corporation upon whom process against it may be served in any action or special proceeding based upon any liability or obligation incurred by the foreign corporation within the state prior to the filing of the certified copy of the order of annulment by the department of state.

**COMPARABLE PROVISIONS:**

Pa. Corporation Not-for-profit Code § 8128; ABA-ALI Model Non-Profit Corporation Act § 78

**Article 3. Unauthorized Conducting of Intrastate Activities**

**§ 1775. Penalty for unauthorized conducting of intrastate activities**

**SOURCE:**

Derived from Corp. Code §§ 6408, 6800 (business and nonprofit corporations)\*

6408. (a) Any foreign corporation which transacts intrastate business in this state and which does not hold a valid certificate from the Secretary of State and is not exempt from the requirement of holding such a certificate by the provisions of Section 6403.2 of this code may be subject to a penalty of twenty dollars (\$20) for each day that such unauthorized intrastate business is transacted; and such foreign corporation, by transacting unauthorized business in this state, shall be deemed to consent to the jurisdiction of the courts of California in any civil action arising in this state wherein such corporation is named a party defendant and shall be deemed to have designated the Secretary of State as the agent upon whom process directed to the corporation may be served within this state.

(b) The penalty established by subdivision (a) of this section shall be assessed according to the number of days it is found that the corporation has been willfully doing unauthorized business in this state. Prosecution under this section may be brought, and the money penalty recovered thereby shall be paid, in the manner provided by Section 6800 for a prosecution brought under that section.

(c) Service on a corporation pursuant to this section may be made by personal delivery to the Secretary of State, or to an assistant or deputy secretary of state, of one copy of the process, together with a written statement signed by the party to the action seeking such service, or by his attorney, setting forth an address to which such process shall be sent by the Secretary of State.

Upon receipt of the process and his fee therefor, the Secretary of State shall forthwith forward the copy of the process, together with a statement indicating the date upon which the process was served upon the Secretary of State, by registered or certified mail, charges prepaid, with request for return receipt, to the corporation at the address specified in said written statement.

The corporation shall appear within 30 days after delivery of the process to the Secretary of State. The Secretary of State shall keep a record of all such process served upon him and shall record therein the time of service and his action in respect thereto. The certificate of the Secretary of State, under his official seal, certifying to the receipt of the process and the forwarding of such process to the corporation, shall be competent and prima facie evidence of the matters stated therein.

**§ 6800. Transacting intrastate business without qualification; criminal penalty; who may prosecute.** Any foreign corporation subject to the provisions of Chapter 3 of this part which transacts intrastate business in this State without complying therewith is guilty of a misdemeanor, punishable by fine of not less than five hundred dollars (\$500), nor more than one thousand dollars (\$1,000), to be recovered in any court of competent jurisdiction.

Prosecution under this section may be brought by the Attorney General or by any district attorney. If brought by the latter, one-half of the fine collected shall be paid to the treasurer of the county in which the conviction was had, and one-half to the State Treasurer. If brought by the Attorney General the entire amount of fine collected shall be paid to the State Treasurer to the credit of the General Fund of the State.

**COMPARABLE PROVISIONS:**

ABA-ALI Model Non-Profit Corporation Act § 80

§ 1776. Consent to jurisdiction; service on Secretary of State

SOURCE:

Derived from part of Corp. Code § 6408 (business and nonprofit corporations)\*

6408. (a) Any foreign corporation which transacts intrastate business in this state and which does not hold a valid certificate from the Secretary of State and is not exempt from the requirement of holding such a certificate by the provisions of Section 6403.2 of this code may be subject to a penalty of twenty dollars (\$20) for each day that such unauthorized intrastate business is transacted; and such foreign corporation, by transacting unauthorized business in this state, shall be deemed to consent to the jurisdiction of the courts of California in any civil action arising in this state wherein such corporation is named a party defendant and shall be deemed to have designated the Secretary of State as the agent upon whom process directed to the corporation may be served within this state.

(b) The penalty established by subdivision (a) of this section shall be assessed according to the number of days it is found that the corporation has been willfully doing unauthorized business in this state. Prosecution under this section may be brought, and the money penalty recovered thereby shall be paid, in the manner provided by Section 6800 for a prosecution brought under that section.

(c) Service on a corporation pursuant to this section may be made by personal delivery to the Secretary of State, or to an assistant or deputy secretary of state, of one copy of the process, together with a written statement signed by the party to the action seeking such service, or by his attorney, setting forth an address to which such process shall be sent by the Secretary of State.

Upon receipt of the process and his fee therefor, the Secretary of State shall forthwith forward the copy of the process, together with a statement indicating the date upon which the process was served upon the Secretary of State, by registered or certified mail, charges prepaid, with request for return receipt, to the corporation at the address specified in said written statement.

The corporation shall appear within 30 days after delivery of the process to the Secretary of State. The Secretary of State shall keep a record of all such process served upon him and shall record therein the time of service and his action in respect thereto. The certificate of the Secretary of State, under his official seal, certifying to the receipt of the process and the forwarding of such process to the corporation, shall be competent and prima facie evidence of the matters stated therein.

§ 1777. Disability to maintain action upon intrastate activity; civil penalty

SOURCE:

Corp. Code § 6801 (business and nonprofit corporations) (substantially the same)\*

conducts  
intrastate  
activities

§ 6801. Disability to maintain action upon intrastate business; civil penalty

A foreign corporation subject to the provisions of ~~Chapter 3 of this part~~ which ~~transacts intrastate business~~ in this State without complying therewith shall not maintain any action or proceeding upon any intrastate ~~business so transacted~~ in any court of this State, commenced prior to compliance with Chapter 3 until it has complied with the provisions thereof, and has ~~paid~~ :

Article 2 (com-  
mencing with  
Section 1751)

activity so  
conducted

(a) Paid \_\_\_\_\_ to the Secretary of State a penalty of two hundred fifty dollars (\$250) in addition to the fees due for filing the statement and designation required by Section ~~6407~~ and ~~was filed~~ 1752; and

(b) Filed \_\_\_\_\_ with the clerk of the court in which the action is pending, receipts showing the payment of said fees and penalty and all franchise taxes and any other taxes on business or property in this State that should have been paid for the period during which it ~~transacted intrastate business~~ conducted intrastate activities.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 1313; ABA-ALI Model Non-Profit Corporation Act § 80

§ 1778. Acting as agent for unauthorized corporation; criminal penalty

SOURCE:

Corp. Code § 6803 (business and nonprofit corporations) (substantially the same)\*

conducts  
intrastate  
activities

§ 6803. Transacting business as agent for unauthorized corporation; criminal penalty. Any person who ~~transacts intrastate business~~ in this State on behalf of a foreign corporation which is not authorized to ~~transact such business~~ in this State, knowing that it is not so authorized, is guilty of a misdemeanor punishable by fine of not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).

conduct such  
activity

CHAPTER 10. SERVICE OF PROCESS

CHAPTER 11. SUPERVISION BY ATTORNEY GENERAL

§ 1901. Power of supervision

SOURCE:

Derived from Corp. Code § 9505 (nonprofit corporation)\*

§ 9505. Property held under public or charitable trust; supervision by attorney general. A nonprofit corporation which holds property subject to any public or charitable trust is subject at all times to examination by the Attorney General, on behalf of the State, to ascertain the condition of its affairs and to what extent, if

at all, it may fail to comply with trusts which it has assumed or may depart from the general purposes for which it is formed. In case of any such failure or departure the Attorney General shall institute, in the name of the State, the proceedings necessary to correct the non-compliance or departure.

**COMPARABLE PROVISIONS:**

**N.Y. Not-for-Profit Corporation Law § 114\***

**§ 114. Visitation of supreme court**

Type B and Type C corporations, whether formed under general or special laws, with their books and vouchers, shall be subject to the visitation and inspection of a justice of the supreme court, or of any person appointed by the court for that purpose. If it appears by the verified petition of a member or creditor of any such corporation, that it, or its directors, officers or agents have misappropriated any of the funds or property of the corporation, or diverted them from the purpose of its incorporation,

or that the corporation has acquired property in excess of the amount which it is authorized by law to hold, or has engaged in any business other than that stated in its certificate of incorporation, the court may order that notice of at least eight days, with a copy of the petition, be served on the corporation and the persons charged with misconduct, requiring them to show cause at a time and place specified, why they should not be required to make and file an inventory and account of the property, effects and liabilities of such corporation with a detailed statement of its transactions during the twelve months next preceding the granting of such order. On the hearing of such application, the court may make an order requiring such inventory, account and statement to be filed, and proceed to take and state an account of the property and liabilities of the corporation, or may appoint a referee for that purpose. When such account is taken and stated, after hearing all the parties to the application, the court may enter a final order determining the amount of property so held by the corporation, its annual income, whether any of the property or funds of the corporation have been misappropriated or diverted to any other purpose than that for which such corporation was incorporated, and whether such corporation has been engaged in any activity not covered by its certificate of incorporation. An appeal may be taken from the order by any party aggrieved to the appellate division of the supreme court, and to the court of appeals, as in a civil action. No corporation shall be required to make and file more than one inventory and account in any one year, nor to make a second account and inventory, while proceedings are pending for the statement of an account under this section.

§ 1902. Interrogatories by Attorney General

SOURCE:

Derived from ABA-ALI Model Non-Profit Corporation Act § 87\*

**SECTION 87. INTERROGATORIES 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 him 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, 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.

§ 1903. Action by Attorney General

SOURCE:

Subdivision (a) is derived in part from Corp. Code § 9505 (nonprofit corporation)\*; subdivision (b) is derived from N.Y. Not-for-Profit Corporation Law § 112(a)(9)\*.

**§ 9505. Property held under public or charitable trust; supervision by attorney general.** A nonprofit corporation which holds property subject to any public or charitable trust is subject at all times to examination by the Attorney General, on behalf of the State, to ascertain the condition of its affairs and to what extent, if at all, it may fail to comply with trusts which it has assumed or may depart from the general purposes for which it is formed. In case of any such failure or departure the Attorney General shall institute, in the name of the State, the proceedings necessary to correct the non-compliance or departure.

§ 112. Actions or special proceedings by attorney-general

(a) The attorney-general may maintain an action or special proceeding:

\* \* \* \* \*

(9) Upon application, ex parte, for an order to the supreme court at a special term held within the judicial district where the office of the corporation is located, and if the court so orders, to enforce any right given under this chapter to members a director or an officer of a Type A corporation. For such purpose, the attorney-general shall have the same status as such members, director or officer.

COMPARABLE PROVISIONS:

N.Y. Not-for-Profit Corporation Law § 112