

Nonprofit Corporations	
7-128-202.	Action without meeting
7-128-203.	Notice of meeting
7-128-204.	Waiver of notice
7-128-205.	Quorum and voting
7-128-206.	Committees of the board
OFFICERS	
7-128-301.	Officers
7-128-302.	Duties of officers
7-128-303.	Resignation and removal of officers
7-128-304.	Contract rights with respect to officers
STANDARDS OF CONDUCT	
7-128-401.	General standards of conduct for directors and officers
7-128-402.	Limitation of certain liabilities of directors and officers
7-128-403.	Liability of directors for unlawful distributions
DIRECTORS' CONFLICTING INTEREST TRANSACTIONS	
7-128-501.	Conflicting interest transaction
INDEMNIFICATION	
7-129-101.	Indemnification definitions
7-129-102.	Authority to indemnify directors
7-129-103.	Mandatory indemnification of directors
7-129-104.	Advance of expenses to directors
7-129-105.	Court-ordered indemnification of directors
7-129-106.	Determination and authorization of indemnification of directors
7-129-107.	Indemnification of officers, employees, fiduciaries, and agents
7-129-108.	Insurance
7-129-109.	Limitation of indemnification of directors
7-129-110.	Notice to voting members of indemnification of director
AMENDMENT OF ARTICLES OF INCORPORATION	
7-130-101.	Authority to amend articles of incorporation
7-130-102.	Amendment of articles of incorporation by board of directors or incorporators
7-130-103.	Amendment of articles of incorporation by board of directors and members
7-130-104.	Voting on amendments of articles of incorporation by voting groups
7-130-105.	Articles of amendment to articles of incorporation
7-130-106.	Restated articles of incorporation
7-130-107.	Amendment of articles of incorporation pursuant to reorganization
7-130-108.	Effect of amendment of articles of incorporation
AMENDMENT OF BYLAWS	
7-130-201.	Amendment of bylaws by board of directors or members
7-130-202.	Bylaw changing quorum or voting requirement for members
7-130-203.	Bylaw changing quorum or voting requirement for directors
APPROVAL BY THIRD PERSONS AND TERMINATING MEMBERS OR REDEEMING OR CANCELING MEMBERSHIPS	
7-130-301.	Approval by third persons
7-130-302.	Amendment terminating members or redeeming or canceling memberships
MERGER	

Nonprofit Corporations

- 7-131-101.** Merger
 7-131-102. Action on plan of merger
 7-131-103. Articles of merger
 7-131-104. Effect of merger
 7-131-105. Merger with foreign nonprofit corporation
 SALE OF PROPERTY
- 7-132-101.** Sale of property
 7-132-102. Sale of property other than in regular course of activities
 DISTRIBUTIONS
- 7-133-101.** Distributions prohibited
 7-133-102. Authorized distributions
 VOLUNTARY DISSOLUTION
- 7-134-101.** Dissolution by incorporators or directors if no members
 7-134-102. Dissolution by directors and members
 7-134-103. Articles of dissolution
 7-134-104. Revocation of dissolution
 7-134-105. Effect of dissolution
 7-134-106. Disposition of known claims by notification
 7-134-107. Disposition of claims by publication
 7-134-108. Enforcement of claims against dissolved nonprofit corporation
 7-134-109. ~~Service on dissolved nonprofit corporation~~
 ADMINISTRATIVE DISSOLUTION
- 7-134-201. Grounds for administrative dissolution
 7-134-202. Procedure for and effect of administrative dissolution
 7-134-203. ~~Reinstatement following administrative dissolution~~
 7-134-204. ~~Appeal from denial of reinstatement~~
 7-134-205. Continuation as unincorporated association
 JUDICIAL DISSOLUTION
- 7-134-301. Grounds for judicial dissolution
 7-134-302. Procedure for judicial dissolution
 7-134-303. Receivership or custodianship
 7-134-304. Decree of dissolution
 DISSOLUTION UPON EXPIRATION
 OF PERIOD OF DURATION
- 7-134-401. Dissolution upon expiration of period of duration
 MISCELLANEOUS
- 7-134-501. Deposit with state treasurer
 AUTHORITY TO CONDUCT AFFAIRS
- 7-135-101.** Authority to conduct ~~affairs~~ *activities* required
~~7-135-102. Consequences of conducting affairs without authority~~
~~7-135-103. Application for authority to conduct affairs~~
~~7-135-104. Amended application for authority to conduct affairs~~
~~7-135-105. Effect of filing an application for authority to conduct affairs~~
~~7-135-106. Corporate name and assumed corporate name of foreign nonprofit corporation (repealed)~~
~~7-135-107. Registered name of foreign nonprofit corporation (repealed)~~
~~7-135-108. Registered office and registered agent of foreign nonprofit corporation~~

Nonprofit Corporations	
7-135-109.	Changes of registered office or registered agent of foreign nonprofit corporation
7-135-110.	Resignation of registered agent of foreign nonprofit corporation
7-135-111.	Service on foreign nonprofit corporation
7-135-112.	Merger of foreign nonprofit corporations authorized to conduct affairs in this state
WITHDRAWAL	
7-135-201.	Withdrawal of foreign nonprofit corporation
7-135-202.	Service on withdrawn foreign nonprofit corporation
REVOCAATION	
7-135-301.	Grounds for revocation
7-135-302.	Procedure for and effect of revocation
7-135-303.	Appeal from revocation
RECORDS, INFORMATION, AND REPORTS	
7-136-101.	Corporate records
7-136-102.	Inspection of corporate records by members
7-136-103.	Scope of member's inspection right
7-136-104.	Court-ordered inspection of corporate records
7-136-105.	Limitations on use of membership list
7-136-106.	Financial statements
7-136-107.	Periodic report to secretary of state
7-136-108.	Statement of person named as director or officer (repealed)
7-136-109.	Interrogatories by secretary of state
APPLICATION OF ACT	
7-137-101.	Application to existing corporations
7-137-102.	Pre-1968 corporate entities - failure to file reports and designate registered offices and agent - dissolution
7-137-103.	Application to foreign nonprofit corporations
ELECTION BY PRE-1968 CORPORATE ENTITIES	
7-137-201.	Procedure to elect to accept articles 121 to 137 of this title
7-137-202.	Statement of election to accept articles 121 to 137 of this title
7-137-203.	Filing statement of election to accept articles 121 to 137 of this title
7-137-204.	Effect of certificate of acceptance
SAVING PROVISIONS	
7-137-301.	Saving provisions

Nonprofit Corporations

ARTICLE 121

General Provisions

293. *Reason for changes:* Generally, see the commentary to the analogous provision in the Colorado Business Corporation Act, articles 101 through 117 of this title, for information on the reason for changes made in the Colorado Revised Nonprofit Corporation Act, articles 121 through 137.

PART 1
SHORT TITLE AND RESERVATION OF POWER

7-121-101. Short title. Articles 121 to 137 of this title shall be known and may be cited as the "Colorado Revised Nonprofit Corporation Act".

7-121-102. Reservation of power to amend or repeal. The general assembly has the power to amend or repeal all or part of articles 121 to 137 of this title at any time and all domestic and foreign nonprofit corporations subject to said articles shall be governed by the amendment or repeal.

PART 2
FILING DOCUMENTS

7-121-201. Filing requirements. Part 3 of article 90 of this title, providing for the filing of documents, applies to any document filed or to be filed by the secretary of state pursuant to articles 121 to 137 of this title.

~~7-121-201. Filing requirements. (1) Any document delivered to the secretary of state for filing pursuant to this article shall be subject to the provisions of part 3 of article 90 of this title.~~

~~(2) to (11) (Deleted by amendment, L. 2002, p. 1852, § 131, effective July 1, 2002; p. 1717, § 131, effective October 1, 2002.)~~

~~7-121-202. Forms - secretary of state to furnish upon request. The secretary of state may prepare and furnish forms and cover sheets for any document required or permitted by articles 121 to 137 of this title and may require the use of any such form or cover sheet; however, no requirement that a form or cover sheet be used shall preclude the inclusion in any document of any item the inclusion of which is not prohibited by said articles or require the inclusion therein of any item the inclusion of which is not required by said articles. The secretary of state shall furnish, on request, any form or cover sheet that the secretary of state requires to be used pursuant to this section.~~

294. <i>Reason for change:</i> Provision is made in part 3 of article 90 for forms and cover sheets.
--

~~7-121-203. Filing, service, and copying fees - subpoenas. (Repealed)~~

~~7-121-204. Effective time and date of document. (Repealed)~~

~~7-121-205. Correcting filed document. (Repealed)~~

~~7-121-206. Filing duty of secretary of state - manner of filing. (Repealed)~~

~~7-121-207. Appeal from secretary of state's refusal to file document. (Repealed)~~

~~7-121-208. Evidentiary effect of copy of filed document. (Repealed)~~

~~7-121-209. Certificates issued by secretary of state. (Repealed)~~

~~7-121-210. Proof of delivery for filing. (Repealed)~~

PART 3
SECRETARY OF STATE

7-121-301. Powers. ~~The secretary of state has all powers reasonably necessary to perform the duties required of the office by articles 121 to 137 of this title.~~

295. *Reason for change:* The powers of the secretary of state are now set forth in part 4 of article 90 of this title.

296. *Note re Change in 2004:* Note that H.B. 03-1377 merely repealed § 7-121-301 and not all of "part 3 of article 121" and thereby appears to have left the caption "Part 3 — Secretary of State" in the title. Compare the full repeal of "part 3 of article 101", which is the analog in the Colorado Business Corporation Act, that is found in the repealer section of the legislation, Section 346.

PART 4
DEFINITIONS

7-121-401. General definitions. As used in articles 121 to 137 of this title, unless the context otherwise requires:

297. *Reason for changes:* Deleted definitions are redundant of those provided in § 7-90-102.

(1) ~~"Address" means any location where mail can be delivered by the United States postal service. "Address" includes post office box numbers, rural free delivery route numbers, and street names and numbers.~~

298. *Reason for change:* The term is defined in § 7-90-102(1).

(2) "Articles of incorporation" includes amended articles of incorporation, restated articles of incorporation, articles of merger, and other instruments, however designated, on file with the secretary of state that have the effect of amending or supplementing in some respect the original or amended articles of incorporation, and shall also include:

(a) For a corporation created by special act of the general assembly or pursuant to general law, which corporation has elected to accept the provisions of articles 121 to 137 of this title, the special charter and any amendments thereto made by special act of the general assembly or pursuant to general law prior to the corporation's election to accept the provisions of said articles;

(b) For a corporation **organized formed or incorporated** under article 40, 50, or 51 of this title, which corporation has elected to accept the provisions of articles 121 to 137 of this title, the certificate of incorporation or affidavit and any amendments thereto made prior to the corporation's election to accept the provisions of said articles.

(3) ~~"Assumed entity name" means the name assumed for use in this state by a foreign corporation or by a foreign nonprofit corporation pursuant to part 6 of article 90 of this title because its entity name is not available for use in this state.~~

(4) "Board of directors" means the body authorized to manage the affairs of the domestic or foreign nonprofit corporation; except that no person or group of persons are the board of directors because of powers delegated to that person or group of persons pursuant to section 7-128-101 (2).

(5) "Bylaws" means the code or codes of rules, other than the articles of incorporation, adopted pursuant to articles 121 to 137 of this title for the regulation or management of the affairs of the domestic or foreign nonprofit corporation irrespective of the name or names by which such rules are designated, and includes amended bylaws and restated bylaws.

(6) "Cash" and "money" are used interchangeably in articles 121 to 137 of this title. Each of these terms includes:

- (a) Legal tender;
- (b) Negotiable instruments readily convertible into legal tender; and
- (c) Other cash equivalents readily convertible into legal tender.

(7) "Class" refers to a group of memberships that have the same rights with respect to voting, dissolution, redemption, and transfer. For the purpose of this section, rights shall be considered the same if they are determined by a formula applied uniformly to a group of memberships.

(8) (Deleted by amendment, L. 2000, p. 982, § 76, effective July 1, 2000.)

(9) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of articles 101 to 117 of this title.

(10) "Delegate" means any person elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

(11) ~~"Deliver" includes mail; except that delivery to the secretary of state means actual receipt by the secretary of state.~~

299. <i>Reason for change:</i> The term is defined in § 7-90-102(10.5).

(12) "Director" means a member of the board of directors.

(13) "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers.

(14) ~~"Effective date", when referring to a document filed by the secretary of state, means the time and date determined in accordance with section 7-90-304.~~

300. <i>Reason for change:</i> The term is defined in § 7-90-102 (19.5).
--

(15) "Effective date of notice" has the meaning set forth in section 7-121-402.

(16) "Employee" includes an officer but not a director; except that a director may accept duties that make said director also an employee.

~~(17) "Entity" includes a domestic or foreign corporation, a domestic or foreign nonprofit corporation, a profit or nonprofit unincorporated association, a business trust, an estate, a partnership, a limited liability company, a trust, two or more persons having a joint or common economic interest, a state, the United States, or a foreign government.~~

~~(18) "Foreign corporation" means a corporation for profit incorporated under a law other than the laws of this state.~~

~~(19) "Foreign nonprofit corporation" means an entity incorporated under a law other than the laws of this state that would be a nonprofit corporation if formed under the laws of this state.~~

~~(20) "Includes" when used in reference to any definition or list indicates that the definition or list is partial and not exclusive.~~

(21) "Internal revenue code" means the federal "Internal Revenue Code of 1986", as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States of America.

~~(22) "Mail" means deposit in the United States mail, properly addressed, postage prepaid.~~

~~(23) "Means" denotes an exhaustive definition or list.~~

(24) "Member" means any person or persons identified as such in the articles of incorporation or bylaws pursuant to a procedure ~~set forth~~ *stated* in the articles of incorporation or bylaws or by a resolution of the board of directors. The term "member" includes "voting member" *and a stockholder in a cooperative housing corporation formed pursuant to section 38-33.5-101, C.R.S.*

(25) "Membership" refers to the rights and obligations of a member or members.

(26) "Nonprofit corporation" or "domestic nonprofit corporation" means an entity, which is not a foreign nonprofit corporation, incorporated under or subject to the provisions of articles 121 to 137 of this title.

~~(27) "Person" means an individual or an entity.~~

301. <i>Reason for change:</i> The term is defined in § 7-90-102(49).

~~(28) "Principal office" means the office, in or out of this state, designated by a domestic or foreign nonprofit corporation as its principal office in its most recent document on file with the secretary of state providing such information, including any notice of change of principal office on file with the secretary of state.~~

~~(29) "Proceeding" includes a civil suit, arbitration, or mediation and a criminal, administrative, or investigatory action.~~

(30) "Receive", when used in reference to receipt of a writing or other document by a domestic or foreign nonprofit corporation, means that the writing or other document is actually received:

(a) By the domestic or foreign nonprofit corporation at its registered office or at its principal office;

(b) By the secretary of the domestic or foreign nonprofit corporation, wherever the secretary is found; or

(c) By any other person authorized by the bylaws or the board of directors to receive such writings, wherever such person is found.

(31) "Record date" means the date, established under article 127 of this title, on which a nonprofit corporation determines the identity of its members. The determination shall be made as of the close of business on the record date unless another time for doing so is **specified stated** when the record date is fixed.

(32) ~~"Registered agent" means the registered agent of a domestic nonprofit corporation required to be maintained pursuant to section 7-125-101 (1) (b) or the registered agent of a foreign nonprofit corporation required to be maintained pursuant to section 7-135-108 (1) (b), as the case may be.~~

302. *Reason for change:* The concept of a registered office is deleted from the Colorado Revised Nonprofit Corporation Act and all other entity organic statutes. Entities must have *registered agents* pursuant to Part 7 of Article 90, but they are not required to have *registered offices*.

(33) ~~"Registered office" means the registered office of a domestic nonprofit corporation required to be maintained pursuant to section 7-125-101 (1) (a) or the registered office of a foreign nonprofit corporation required to be maintained pursuant to section 7-135-108 (1) (a), as the case may be.~~

(34) "Secretary" means the corporate officer to whom the bylaws or the board of directors has delegated responsibility under section 7-128-301 (3) for the preparation and maintenance of minutes of the meetings of the board of directors and of the ~~shareholders~~ *members* and of the other records and information required to be kept by the nonprofit corporation under section 7-136-101 and for authenticating records of the nonprofit corporation.

(35) ~~"State", when referring to a part of the United States, includes:~~

303. *Reason for change:* "State" is defined in § 7-90-102(61) for all of Title 7.

~~(a) A state, a commonwealth, and the District of Columbia, together with all agencies and governmental and political subdivisions thereof; and~~

304. *Reason for change:* The term defined in § 7-90-102(61).

~~(b) Any territory or insular possession of the United States, together with all agencies and governmental and political subdivisions thereof.~~

(36) ~~"Street address" means street name and number, city or town, and United States post office zip code designation. If, by reason of rural location or otherwise, a street name, number, town, or city does not exist, another appropriate description fixing as nearly as possible the actual physical location may be substituted, but in all such cases the rural free delivery route, the county, and the United States post office zip code designation shall be included.~~

(37) ~~"United States" includes any district, authority, office, bureau, commission, department, and any other agency of the United States of America.~~

(38) "Vote" includes authorization by written ballot and written consent.

(39) "Voting group" means all the members of one or more classes of members or directors that, under articles 121 to 137 of this title or the articles of incorporation or bylaws, are entitled to vote and be counted together collectively on a matter. All members or directors entitled by articles 121 to 137 of this title or the articles of incorporation or bylaws to vote generally on the matter are for that purpose a single voting group.

(40) "Voting member" means any person or persons who on more than one occasion, pursuant to a provision of a nonprofit corporation's articles of incorporation or bylaws, have the right to vote for the election of a director or directors. A person is not a voting member solely by virtue of any of the following:

- (a) Any rights such person has as a delegate;
- (b) Any rights such person has to designate a director or directors; or
- (c) Any rights such person has as a director.

7-121-402. Notice. (1) Notice given pursuant to articles 121 to 137 of this title shall be in writing unless otherwise provided in the bylaws.

(2) Notice may be given in person; by telephone, telegraph, teletype, electronically transmitted, or other form of wire or wireless communication; or by mail or private carrier. The bylaws may provide that if these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published.

(3) Written notice by a nonprofit corporation to its members, if mailed, is correctly addressed if addressed to the member's address shown in the nonprofit corporation's current record of members. If three successive notices given to a member pursuant to subsection (5) of this section have been returned as undeliverable, no further notices to such member shall be necessary until another address for the member is made known to the nonprofit corporation.

(4) Written notice to a domestic nonprofit corporation or to a foreign nonprofit corporation authorized to transact business *or conduct activities* in this state, other than in its capacity as a member, is correctly addressed if addressed to *it's the* registered agent **at address of** its registered **office agent** or to the domestic or foreign nonprofit corporation or its secretary at its principal office. ~~as shown in its most recent periodic report, or, if a periodic report has not been delivered, to a domestic nonprofit corporation in its articles of incorporation or to a foreign nonprofit corporation in its application for a certificate of authority.~~

305. *Note re Change in 2004:* The word "it's" should be deleted.

(5) Written notice by a nonprofit corporation to its members, if in a comprehensible form, is effective at the earliest of:

(a) The date received;

(b) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed correctly addressed and with first class postage affixed;

(c) The date shown on the return receipt, if mailed by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee;

(d) Thirty days after its deposit in the United States mail, as evidenced by the postmark, if mailed correctly addressed and with other than first class, registered, or certified postage affixed.

(6) Oral notice is effective when communicated if communicated in a comprehensible manner.

(7) Notice by publication is effective on the date of first publication.

(8) If articles 121 to 137 of this title prescribe notice requirements for particular circumstances, those requirements govern. If the articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of articles 121 to 137 of this title, those requirements govern.

(9) A written notice or report delivered as part of a newsletter, magazine, or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's address shown in the nonprofit corporation's current list of members, or in the case of members who are residents of the same household and who have the same address in the nonprofit corporation's current list of members, if addressed or delivered to one of such members, at the address appearing on the current list of members.

PART 5 PRIVATE FOUNDATIONS

7-121-501. Private foundations. (1) Except where otherwise determined by a court of competent jurisdiction, a nonprofit corporation that is a private foundation as defined in section 509 (a) of the internal revenue code:

(a) Shall distribute such amounts for each taxable year at such time and in such manner as not to subject the nonprofit corporation to tax under section 4942 of the internal revenue code;

(b) Shall not engage in any act of self-dealing as defined in section 4941 (d) of the internal revenue code;

(c) Shall not retain any excess business holdings as defined in section 4943 (c) of the internal revenue code;

(d) Shall not make any investments that would subject the nonprofit corporation to taxation under section 4944 of the internal revenue code;

(e) Shall not make any taxable expenditures as defined in section 4945 (d) of the internal revenue code.

PART 6 JUDICIAL RELIEF

7-121-601. Judicial relief. (1) If for any reason it is impractical or impossible for any nonprofit corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by articles 121 to 137 of this title, its articles of incorporation, or bylaws, then upon petition of a director, officer, delegate, or member the district court ~~of for~~ the county in this state ~~where in which the street address of~~ the nonprofit corporation's principal office is located, or if the nonprofit corporation has no principal office in this state, the district court ~~of for~~ the county in which the ~~street address of its~~ registered ~~office agent~~ is located, or if the nonprofit corporation has no registered ~~office in this state agent~~, the district court ~~of for~~ the city and county of Denver, may order that such a meeting be called or that a written consent or other form of obtaining the vote of members, delegates, or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances.

(2) The court shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to articles 121 to 137 of this title, the articles of incorporation, or bylaws and whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the court may determine who the members or directors are.

(3) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by articles 121 to 137 of this title, the articles of incorporation, or bylaws.

(4) Whenever practical, any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles of incorporation or bylaws, the resolution of which will or may enable the nonprofit corporation to continue managing its affairs without further resort to this section; except that an order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale of assets.

(5) Any meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to an order issued under this section and that complies with all the provisions of such order is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by articles 121 to 137 of this title, the articles of incorporation, or bylaws.

(6) Court ordered meetings may also be held pursuant to section 7-127-103.

ARTICLE 122 Incorporation

7-122-101. Incorporators. One or more persons may act as the incorporator or incorporators of a nonprofit corporation by delivering articles of incorporation to the secretary of state for filing pursuant

to part 3 of article 90 of this title. An incorporator who is a natural person shall be eighteen years of age or older.

306. *Note re Change in 2004:* In accordance with the drafting convention, the phrase "for filing pursuant to part 3 of article 90 of this title" should begin with a comma.

7-122-102. Articles of incorporation. (1) The articles of incorporation shall ~~set forth state~~:

(a) ~~An~~ *The domestic* entity name for the nonprofit corporation, ~~that satisfies the requirements of which domestic entity name shall comply with~~ part 6 of article 90 of this title;

(b) The ~~street~~ *registered agent name and registered agent* address of the nonprofit corporation's initial registered ~~office and the name of its initial registered~~ agent; ~~at that office;~~

(c) The *principal office* address of the nonprofit corporation's initial principal office;

(d) The name and address of each incorporator;

(e) Whether or not the nonprofit corporation will have voting members;

(f) Repealed.

(g) Provisions not inconsistent with law regarding the distribution of assets on dissolution.

(2) The articles of incorporation may but need not ~~set forth state~~:

(a) The names and addresses of the individuals who are elected to serve as the initial directors;

(b) Provisions not inconsistent with law regarding:

(I) The purpose or purposes for which the nonprofit corporation is incorporated;

(II) Managing and regulating the affairs of the nonprofit corporation;

(III) Defining, limiting, and regulating the powers of the nonprofit corporation, its board of directors, and its members, or any class of members; and

(IV) Whether cumulative voting will be permitted.

(c) Any provision that under articles 121 to 137 of this title is required or permitted to be ~~set forth stated~~ in the bylaws.

(d) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members.

(3) The articles of incorporation need not ~~set forth state~~ any of the corporate powers enumerated in articles 121 to 137 of this title.

(4) If articles 121 to 137 of this title condition any matter upon the presence of a provision in the bylaws, the condition is satisfied if such provision is present either in the articles of incorporation or the bylaws. If articles 121 to 137 of this title condition any matter upon the absence of a provision in the bylaws, the condition is satisfied only if the provision is absent from both the articles of incorporation and the bylaws.

7-122-103. Incorporation. (1) A nonprofit corporation is incorporated when the articles of incorporation are filed by the secretary of state or, if a delayed effective date is **specified stated** pursuant to section 7-90-304 in the articles of incorporation as filed by the secretary of state and a certificate of withdrawal is not filed, on such delayed effective date. The corporate existence begins upon incorporation.

(2) The secretary of state's filing of the articles of incorporation is conclusive that all conditions precedent to incorporation have been met.

7-122-104. Unauthorized assumption of corporate powers. All persons purporting to act as or on behalf of a nonprofit corporation without authority to do so and without good faith belief that they have such authority shall be jointly and severally liable for all liabilities incurred or arising as a result thereof.

7-122-105. Organization of nonprofit corporation. (1) After incorporation:

(a) If initial directors are not named in the articles of incorporation, the incorporators shall hold a meeting, at the call of a majority of the incorporators, to adopt initial bylaws, if desired, and to elect a board of directors; and

(b) If initial directors are named in the articles of incorporation, the initial directors shall hold a meeting, at the call of a majority of the directors, to adopt bylaws, if desired, to appoint officers, and to carry on any other business.

(2) Action required or permitted by articles 121 to 137 of this title to be taken by incorporators at an organizational meeting may be taken without a meeting if the action is taken in the manner provided in section 7-128-202 for action by directors without a meeting.

(3) An organizational meeting may be held in or out of this state.

7-122-106. Bylaws. (1) The board of directors or, if no directors have been named or elected, the incorporators may adopt initial bylaws. If neither the incorporators nor the board of directors have adopted initial bylaws, the members may do so.

(2) The bylaws of a nonprofit corporation may contain any provision for managing and regulating the affairs of the nonprofit corporation that is not inconsistent with law or with the articles of incorporation.

7-122-107. Emergency bylaws. (1) Unless otherwise provided in the articles of incorporation, the board of directors may adopt bylaws to be effective only in an emergency as defined in subsection (4) of this section. The emergency bylaws, which are subject to amendment or repeal by the members, may include all provisions necessary for managing the nonprofit corporation during the emergency, including:

(a) Procedures for calling a meeting of the board of directors;

(b) Quorum requirements for the meeting; and

(c) Designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws shall remain in effect during the emergency. The emergency bylaws shall not be effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) Binds the nonprofit corporation; and

(b) May not be the basis for imposition of liability on any director, officer, employee, or agent of the nonprofit corporation on the ground that the action was not authorized corporate action.

(4) An emergency exists for the purposes of this section if a quorum of the directors cannot readily be obtained because of some catastrophic event.

ARTICLE 123

Purposes and Powers

7-123-101. Purposes and applicability. (1) Every nonprofit corporation incorporated under articles 121 to 137 of this title has the purpose of engaging in any lawful business or activity unless a more limited purpose is ~~set forth~~ *stated* in the articles of incorporation.

(2) Where another statute of this state requires that corporations of a particular class be ~~organized~~ *formed* or incorporated exclusively under that statute, corporations of that class shall be ~~organized~~ *formed* or incorporated under such other statute. The corporation shall be subject to all limitations of the other statute.

(3) Where another statute of this state requires nonprofit corporations of a particular class to be ~~organized~~ *formed* or incorporated under that statute and also under general nonprofit corporation statutes, such nonprofit corporations shall be ~~organized~~ *formed* or incorporated under such other statute and, in addition thereto, under articles 121 to 137 of this title to the extent general nonprofit corporation ~~laws are~~ *law is* applicable.

(4) Where another statute of this state permits nonprofit corporations of a particular class to be ~~organized~~ *formed* or incorporated either under that statute or under the general nonprofit corporation statutes, a nonprofit corporation of that class may at the election of its incorporators be ~~organized~~ *formed* or incorporated under articles 121 to 137 of this title. Unless the articles of incorporation of a nonprofit corporation indicate that it is ~~organized~~ *formed* or incorporated under another statute, the nonprofit corporation shall for all purposes be considered as ~~organized~~ *formed* and incorporated under articles 121 to 137 of this title.

(5) Articles 121 to 137 of this title shall apply to nonprofit corporations of every class, whether or not included in the term "nonprofit corporation" as defined in section 7-121-401 (26), ~~which that~~ are ~~organized~~ *formed* or incorporated under and governed by other statutes of this state to the extent that said articles are not inconsistent with such other statutes.

(6) Articles 121 to 137 of this title shall apply to any nonprofit corporation ~~organized~~ *formed* prior to January 1, 1968, under article 40 or 50 of this title without shares or capital stock and for a purpose for

which a nonprofit corporation might be **organized formed** under articles 121 to 137 of this title and that elects to accept said articles as provided therein.

(7) Articles 121 to 137 of this title shall apply to any corporation having shares or capital stock and **organized formed** under article 40, 50, or 51 of this title, and each nonprofit corporation whether with or without shares or capital stock **organized formed** prior to January 1, 1968, under general law or created by special act of the general assembly for a purpose for which a nonprofit corporation may be **organized formed** under articles 121 to 137 of this title, but not otherwise entitled to the rights, privileges, immunities, and franchises provided by said articles that elects to accept said articles as provided therein.

7-123-102. General powers.(1) Unless otherwise provided in the articles of incorporation, every nonprofit corporation has perpetual duration and succession in its *domestic* entity name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs, including the power:

- (a) To sue and be sued, complain, and defend in its entity name;
- (b) To have a corporate seal, which may be altered at will, and to use such seal, or a facsimile thereof, including a rubber stamp, by impressing or affixing it or by reproducing it in any other manner;
- (c) To make and amend bylaws;
- (d) To purchase, receive, lease, and otherwise acquire, and to own, hold, improve, use, and otherwise deal with, real or personal property or any legal or equitable interest in property, wherever located;
- (e) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (f) To purchase, receive, subscribe for, and otherwise acquire shares and other interests in, and obligations of, any other entity; and to own, hold, vote, use, sell, mortgage, lend, pledge, and otherwise dispose of, and deal in and with, the same;
- (g) To make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
- (h) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment; except that a nonprofit corporation may not lend money to or guarantee the obligation of a director or officer of the nonprofit corporation;
- (i) To be an agent, an associate, a fiduciary, a manager, a member, a partner, a promoter, or a trustee of, or to hold any similar position with, any entity;
- (j) To conduct its activities, locate offices, and exercise the powers granted by articles 121 to 137 of this title within or without this state;
- (k) To elect or appoint directors, officers, employees, and agents of the nonprofit corporation, define their duties, and fix their compensation;
- (l) To pay pensions and establish pension plans, pension trusts, profit sharing plans, and other benefit or incentive plans for any of its current or former directors, officers, employees, and agents;

(m) To make donations for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interest;

(n) To impose dues, assessments, admission, and transfer fees upon its members;

(o) To establish conditions for admission of members, admit members, and issue or transfer memberships;

(p) To carry on a business;

(q) To make payments or donations and to do any other act, not inconsistent with law, that furthers the affairs of the nonprofit corporation;

(r) To indemnify current or former directors, officers, employees, fiduciaries, or agents as provided in article 129 of this title;

(s) To limit the liability of its directors as provided in section 7-128-402 (1); and

(t) To cease its corporate activities and dissolve.

(2) Unless permitted by another statute of this state or otherwise permitted pursuant to section 7-123-101 (5), 7-123-101 (7), or 7-137-201, a nonprofit corporation shall not authorize or issue shares of stock.

7-123-103. Emergency powers. (1) In anticipation of or during an emergency defined in subsection (4) of this section, the board of directors may:

(a) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(b) Relocate the principal office *or* designate ~~alternative principal offices or regional~~ *additional* offices, or authorize officers to do so.

(2) During an emergency as contemplated in subsection (4) of this section, unless emergency bylaws provide otherwise:

(a) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication or radio; and

(b) One or more officers of the nonprofit corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(3) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the nonprofit corporation:

(a) Binds the nonprofit corporation; and

(b) May not be the basis for the imposition of liability on any director, officer, employee, or agent of the nonprofit corporation on the ground that the action was not authorized corporate action.

(4) An emergency exists for purposes of this section if a quorum of the directors cannot readily be obtained because of some catastrophic event.

7-123-104. Ultra vires. (1) Except as provided in subsection (2) of this section, the validity of corporate action may not be challenged on the ground that the nonprofit corporation lacks or lacked power to act.

(2) A nonprofit corporation's power to act may be challenged:

(a) In a proceeding against the nonprofit corporation to enjoin the act. The proceeding may be brought by a director or by a voting member or voting members in a derivative proceeding.

(b) In a proceeding by or in the right of the nonprofit corporation, whether directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the nonprofit corporation; or

(c) In a proceeding by the attorney general under section 7-134-301.

(3) In a proceeding under paragraph (a) of subsection (2) of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if it would be equitable to do so and if all affected persons are parties to the proceeding, and may award damages for loss, including anticipated profits, suffered by the nonprofit corporation or another party because of the injunction.

7-123-105. Actions against nonprofit corporations. Any other provision of law to the contrary notwithstanding, any civil action permitted under the ~~laws~~ *law* of this state may be brought against any nonprofit corporation, and the assets of any nonprofit corporation that would, but for articles 121 to 137 of this title, be immune from levy and execution on any judgment shall nonetheless be subject to levy and execution to the extent that such nonprofit corporation would be reimbursed by proceeds of liability insurance policies carried by it were judgment levied and executed against its assets.

ARTICLE 124

Name

7-124-101. Corporate name. (Repealed)

7-124-102. Reserved name. (Repealed)

ARTICLE 125

Office and Agent

7-125-101. Registered office and registered agent. *Part 7 of article 90 of this title, providing for registered agents and service of process, applies to nonprofit corporations incorporated under or subject to this article.*

307. <i>Reason for change:</i> Registered agents are provided for in part 7 of article 90 of this title.
--

~~**7-125-101. Registered office and registered agent. (1) Each nonprofit corporation shall continuously maintain in this state:**~~

~~—— (a) A registered office; and~~

~~—— (b) A registered agent, who shall be:~~

~~—— (I) An individual who resides in this state and whose business office is identical with the registered office;~~

~~—— (II) A domestic corporation or domestic nonprofit corporation whose business office is identical with the registered office; or~~

~~—— (III) A foreign corporation or foreign nonprofit corporation authorized to transact business in this state whose business office is identical with the registered office.~~

~~—— (2) A nonprofit corporation shall not serve as its own registered agent.~~

~~7-125-102. Change of registered office or registered agent. (1) A nonprofit corporation may change its registered office or registered agent by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of change that sets forth:~~

308. Reason for change: Registered agents are provided for in part 7 of article 90 of this title.

~~—— (a) The entity name of the corporation;~~

~~—— (b) The street address of its current registered office;~~

~~—— (c) If the registered office is to be changed, the street address of the new registered office;~~

~~—— (d) The name of its current registered agent;~~

~~—— (e) If the registered agent is to be changed, the name of the new registered agent; and~~

~~—— (f) That, after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.~~

~~—— (2) If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any nonprofit corporation for which the registered agent is the registered agent by giving written notice to the nonprofit corporation of the change and delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of change that complies with the requirements of subsection (1) of this section and recites that notice of the change has been given to the nonprofit corporation.~~

~~7-125-103. Resignation of registered agent. (1) The registered agent of a nonprofit corporation may resign the agency by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of resignation, which shall be accompanied by two exact or conformed copies thereof. The statement of resignation may include a statement that the registered office is also discontinued.~~

309. Reason for change: Registered agents are provided for in part 7 of article 90 of this title.

~~— (2) After filing the statement of resignation, the secretary of state shall deliver one copy to the registered office of the nonprofit corporation together with the receipt for filing fees, if any, and the other copy to the principal office of the nonprofit corporation.~~

~~— (3) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement of resignation was filed.~~

7-125-104. Service on nonprofit corporation. ~~(1) A nonprofit corporation's registered agent is the nonprofit corporation's agent for service of any process, notice, or demand required or permitted by law to be served on the nonprofit corporation.~~

310. Reason for change: Service of process is provided for in part 7 of article 90 of this title.

~~— (2) If a nonprofit corporation has no registered agent, or the registered agent cannot with reasonable diligence be served, the nonprofit corporation may be served by registered or certified mail, return receipt requested, addressed to the nonprofit corporation at its principal office. Service is perfected under this subsection (2) at the earliest of:~~

~~— (a) The date the nonprofit corporation receives the process, notice, or demand;~~

~~— (b) The date shown on the return receipt, if signed on behalf of the nonprofit corporation;~~
~~or~~

~~— (c) Five days after mailing with first class postage prepaid.~~

~~— (3) This section does not prescribe the only means, or necessarily the required means, of serving a nonprofit corporation.~~

ARTICLE 126

Members and Memberships

PART 1

ADMISSION OF MEMBERS AND LIABILITY TO THIRD PARTIES

7-126-101. No requirement of members. A nonprofit corporation is not required to have members.

7-126-102. Admission. (1) The bylaws may establish criteria or procedures for admission of members.

(2) No person shall be admitted as a member without such person's consent.

(3) A nonprofit corporation may issue certificates evidencing membership therein.

7-126-103. Liability to third parties. The directors, officers, employees, and members of a nonprofit corporation are not, as such, personally liable for the acts, debts, liabilities, or obligations of a nonprofit corporation.

7-126-104. Consideration. Unless otherwise provided by the bylaws, a nonprofit corporation may admit members for no consideration or for such consideration as is determined by the board of directors.

PART 2
TYPES OF MEMBERSHIPS - MEMBERS'
RIGHTS AND OBLIGATIONS

7-126-201. Differences in rights and obligations of members. (1) Unless otherwise provided by articles 121 to 137 of this title or the bylaws:

(a) All voting members shall have the same rights and obligations with respect to voting and all other matters that articles 121 to 137 of this title specifically reserve to voting members; and

(b) With respect to matters not so reserved, all members, including voting members, shall have the same rights and obligations.

7-126-202. Transfers. (1) Unless otherwise provided by the bylaws, no member of a nonprofit corporation may transfer a membership or any right arising therefrom.

(2) Where transfer rights have been provided, no restriction on them shall be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the affected member.

7-126-203. Creditor's action against member. No proceeding may be brought by a creditor to reach the liability, if any, of a member to the nonprofit corporation unless final judgment has been rendered in favor of the creditor against the nonprofit corporation and execution has been returned unsatisfied in whole or in part or unless such proceeding would be useless.

PART 3
RESIGNATION AND TERMINATION

7-126-301. Resignation. (1) Unless otherwise provided by the bylaws, a member may resign at any time.

(2) The resignation of a member does not relieve the member from any obligations the member may have to the nonprofit corporation as a result of obligations incurred or commitments made prior to resignation.

7-126-302. Termination, expulsion, or suspension. (1) Unless otherwise provided by the bylaws, no member of a nonprofit corporation may be expelled or suspended, and no membership or memberships in such nonprofit corporation may be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(2) For purposes of this section, a procedure is fair and reasonable when either:

(a) The bylaws or a written policy of the board of directors ~~set forth~~ *state* a procedure that provides:

(I) Not less than fifteen days prior written notice of the expulsion, suspension, or termination and the reasons therefor; and

(II) An opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, termination, or suspension not take place; or

(b) It is fair and reasonable taking into consideration all of the relevant facts and circumstances.

(3) For purposes of this section, any written notice given by mail must be given by first-class or certified mail sent to the last address of the member shown on the nonprofit corporation's records.

(4) Unless otherwise provided by the bylaws, any proceeding challenging an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension, or termination.

(5) Unless otherwise provided by the bylaws, a member who has been expelled or suspended may be liable to the nonprofit corporation for dues, assessments, or fees as a result of obligations incurred or commitments made prior to expulsion or suspension.

7-126-303. Purchase of memberships. Unless otherwise provided by the bylaws, a nonprofit corporation shall not purchase the membership of a member who resigns or whose membership is terminated. If so authorized, a nonprofit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions ~~set forth~~ *stated* in or authorized by its bylaws. No payment shall be made in violation of article 133 of this title.

PART 4 DERIVATIVE SUITS

7-126-401. Derivative suits. (1) Without affecting the right of a member or director to bring a proceeding against a nonprofit corporation or its officers or directors, a proceeding may be brought in the right of a nonprofit corporation to procure a judgment in its favor by:

(a) Any voting member or voting members having five percent or more of the voting power; or

(b) Any director.

(2) In any such proceeding, each complainant shall be a voting member or director at the time of bringing the proceeding.

(3) A complaint in a proceeding brought in the right of a nonprofit corporation must be verified and allege with particularity the demand made, if any, to obtain action by the directors and either why the complainants could not obtain the action or why they did not make the demand. If a demand for action was made and the nonprofit corporation's investigation of the demand is in progress when the proceeding is filed, the court may stay the suit until the investigation is completed.

(4) In any action instituted in the right of a nonprofit corporation by one or more voting members, the court having jurisdiction over the matter may, at any time before final judgment, require the plaintiff to give security for the costs and reasonable expenses that may be directly attributable to and incurred by the nonprofit corporation in the defense of such action or may be incurred by other parties named as defendant for which the nonprofit corporation may become legally liable, but not including fees of attorneys. The amount of such security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or is excessive. If the court finds that the action was commenced without reasonable cause, the nonprofit corporation shall have recourse to such security in such amount as the court shall determine upon the termination of such action.

(5) No action shall be commenced in this state by a member of a foreign nonprofit corporation in the right of a foreign nonprofit corporation unless such action is permitted by the ~~laws~~ *law* of the state under which such foreign nonprofit corporation is incorporated.

PART 5 DELEGATES

7-126-501. Delegates. (1) A nonprofit corporation may provide in its bylaws for delegates having some or all of the authority of members.

(2) The bylaws may ~~set forth~~ *state* provisions relating to:

(a) The characteristics, qualifications, rights, limitations, and obligations of delegates, including their selection and removal;

(b) Calling, noticing, holding, and conducting meetings of delegates; and

(c) Carrying on corporate activities during and between meetings of delegates.

ARTICLE 127 Members' Meetings and Voting

PART 1 MEETINGS

7-127-101. Annual and regular meetings. (1) Unless the bylaws eliminate the requirement for holding an annual meeting, a nonprofit corporation that has voting members shall hold a meeting of the voting members annually at a time stated in or fixed in accordance with the bylaws, or, if not so fixed, at a time and date stated in or fixed in accordance with a resolution of the board of directors.

(2) A nonprofit corporation with members may hold regular membership meetings at a time and date stated in or fixed in accordance with the bylaws, or, if not so fixed, at a time and date stated in or fixed in accordance with a resolution of the board of directors.

(3) Annual and regular membership meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws, or, if not so stated or fixed, at a place stated or fixed in accordance with a resolution of the board of directors. If no place is so stated or fixed, annual and regular meetings shall be held at the nonprofit corporation's principal office.

(4) The failure to hold an annual or regular meeting at the time and date determined pursuant to subsection (1) of this section does not affect the validity of any corporate action and does not work a forfeiture or dissolution of the nonprofit corporation.

7-127-102. Special meeting. (1) A nonprofit corporation shall hold a special meeting of its members:

(a) On call of its board of directors or the person or persons authorized by the bylaws or resolution of the board of directors to call such a meeting; or

(b) Unless otherwise provided by the bylaws, if the nonprofit corporation receives one or more written demands for the meeting, stating the purpose or purposes for which it is to be held, signed and dated by members holding at least ten percent of all the votes entitled pursuant to the bylaws to be cast on any issue proposed to be considered at the meeting.

(2) If not otherwise fixed under section 7-127-103 or 7-127-106, the record date for determining the members entitled to demand a special meeting pursuant to paragraph (b) of subsection (1) of this section is the date of the earliest of any of the demands pursuant to which the meeting is called, or the date that is sixty days before the date the first of such demands is received by the nonprofit corporation, whichever is later.

(3) If a notice for a special meeting demanded pursuant to paragraph (b) of subsection (1) of this section is not given pursuant to section 7-127-104 within thirty days after the date the written demand or demands are delivered to a corporate officer, regardless of the requirements of subsection (4) of this section, a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to section 7-127-104.

(4) Special meetings of the members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws, or, if not so stated or fixed, at a place stated or fixed in accordance with a resolution of the board of directors. If no place is so stated or fixed, special meetings shall be held at the nonprofit corporation's principal office.

(5) Unless otherwise provided by the bylaws, only business within the purpose or purposes described in the notice of the meeting required by section 7-127-104 (3) may be conducted at a special meeting of the members.

7-127-103. Court-ordered meeting. (1) The holding of a meeting of the members may be summarily ordered by the district court ~~of for~~ the county in this state ~~where in which the street address~~ *of* the nonprofit corporation's principal office is located or, if the nonprofit corporation has no principal office in this state, by the district court ~~of for~~ the county in which *the street address of* its registered ~~office~~ *agent* is located or, if the nonprofit corporation has no registered ~~office agent~~, by the district court for the city and county of Denver:

(a) On application of any voting member entitled to participate in an annual meeting if an annual meeting was required to be held and was not held within the earlier of six months after the close of the nonprofit corporation's most recently ended fiscal year or fifteen months after its last annual meeting; or

(b) On application of any person who participated in a call of or demand for a special meeting effective under section 7-127-102 (1), if:

(I) Notice of the special meeting was not given within thirty days after the date of the call or the date the last of the demands necessary to require the calling of the meeting was received by the nonprofit corporation pursuant to section 7-127-102 (1) (b), as the case may be; or

(II) The special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the members entitled to participate in the meeting, **specify fix** a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the notice of the meeting, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary or appropriate to accomplish the holding of the meeting.

7-127-104. Notice of meeting. (1) A nonprofit corporation shall give to each member entitled to vote at the meeting notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

(2) Any notice that conforms to the requirements of subsection (3) of this section is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered.

(3) Notice is fair and reasonable if:

(a) The nonprofit corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members no fewer than ten days, or if notice is mailed by other than first class or registered mail, no fewer than thirty days, nor more than sixty days before the meeting date, and if notice is given by newspaper as provided in section 7-121-402 (2), the notice must be published five separate times with the first such publication no more than sixty days, and the last such publication no fewer than ten days, before the meeting date.

(b) Notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the members or for which the members' approval is sought under sections 7-128-501, 7-129-110, 7-130-103, 7-130-201, 7-131-102, 7-132-102, and 7-134-102; and

(c) Unless otherwise provided by articles 121 to 137 of this title or the bylaws, notice of a special meeting includes a description of the purpose or purposes for which the meeting is called.

(4) Unless otherwise provided by the bylaws, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 7-127-106, however, notice of the adjourned meeting must be given under this section to the members of record as of the new record date.

(5) When giving notice of an annual, regular, or special meeting of members, a nonprofit corporation shall give notice of a matter a member intends to raise at the meeting if:

(a) Requested in writing to do so by a person entitled to call a special meeting; and

(b) The request is received by the secretary or president of the nonprofit corporation at least ten days before the nonprofit corporation gives notice of the meeting.

7-127-105. Waiver of notice.(1) A member may waive any notice required by articles 121 to 137 of this title or by the bylaws, whether before or after the date or time stated in the notice as the date or time when any action will occur or has occurred. The waiver shall be in writing, be signed by the member entitled to the notice, and be delivered to the nonprofit corporation for inclusion in the minutes or filing with the corporate records, but such delivery and filing shall not be conditions of the effectiveness of the waiver.

(2) A member's attendance at a meeting:

(a) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice; and

(b) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

7-127-106. Record date - determining members entitled to notice and vote. (1) The bylaws may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board of directors may fix a future date as such a record date. If no such record date is fixed, members at the close of business on the business day preceding the day on which notice is given, or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held are entitled to notice of the meeting.

(2) The bylaws may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

(3) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as the record date. If no such record date is fixed, members at the close of business on the day on which the board adopts the resolution relating thereto, or the sixtieth day prior to the date of such other action, whichever is later, are entitled to exercise such rights.

(4) A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of members occurs.

(5) A determination of members entitled to notice of or to vote at a meeting of members is effective for any adjournment of the meeting unless the board of directors fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than one hundred twenty days after the record date for determining members entitled to notice of the original meeting.

(6) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting.

7-127-107. Action without meeting. (1) Unless otherwise provided by the bylaws, any action required or permitted by articles 121 to 137 of this title to be taken at a members' meeting may be taken

without a meeting if members entitled to vote thereon unanimously agree and consent to such action in writing.

(2) No action taken pursuant to this section shall be effective unless writings describing and consenting to the action, signed by members sufficient under subsection (1) of this section to take the action and not revoked pursuant to subsection (3) of this section, are received by the nonprofit corporation within sixty days after the date the earliest dated writing describing and consenting to the action is received by the nonprofit corporation. Unless otherwise provided by the bylaws, any such writing may be received by the nonprofit corporation by electronically transmitted facsimile or other form of wire or wireless communication providing the nonprofit corporation with a complete copy thereof, including a copy of the signature thereto. Action taken pursuant to this section shall be effective when the last writing necessary to effect the action is received by the nonprofit corporation, unless the writings describing and consenting to the action ~~set forth~~ **state** a different effective date.

(3) Any member who has signed a writing describing and consenting to action taken pursuant to this section may revoke such consent by a writing signed and dated by the member describing the action and stating that the member's prior consent thereto is revoked, if such writing is received by the nonprofit corporation before the last writing necessary to effect the action is received by the nonprofit corporation.

(4) Subject to subsection (8) of this section, the record date for determining members entitled to take action without a meeting or entitled to be given notice under subsection (7) of this section of action so taken is the date a writing upon which the action is taken pursuant to subsection (1) of this section is first received by the nonprofit corporation.

(5) Action taken under this section has the same effect as action taken at a meeting of members and may be described as such in any document.

(6) In the event voting members are entitled to vote cumulatively in the election of directors, voting members may take action under this section to elect or remove directors only pursuant to section 7-127-208 and only if the required signed writings describing and consenting to the election or removal of the directors are received by the nonprofit corporation.

(7) In the event action is taken under subsection (1) of this section with less than unanimous consent of all members entitled to vote upon the action, the nonprofit corporation or the members taking the action shall, promptly after all of the writings necessary to effect the action have been received by the nonprofit corporation, give notice of such action to all members who were entitled to vote upon the action. The notice shall contain or be accompanied by the same material, if any, that under articles 121 to 137 of this title would have been required to be given to members in or with a notice of the meeting at which the action would have been submitted to the members for action.

(8) The district court ~~of for~~ the county in this state ~~where in which the street address of~~ the nonprofit corporation's principal office is located or, if the nonprofit corporation has no principal office in this state, the district court ~~of for~~ the county in which the ~~nonprofit corporation's street address of its~~ registered ~~office agent~~ is located or, if the nonprofit corporation has no registered ~~office agent~~, the district court for the city and county of Denver may, upon application of the nonprofit corporation or any member who would be entitled to vote on the action at a members' meeting, summarily ~~specify~~ **state** a record date for determining members entitled to sign writings consenting to an action under this section and may enter other orders necessary or appropriate to effect the purposes of this section.

(9) All signed written instruments necessary for any action taken pursuant to this section shall be filed with the minutes of the meetings of the members.

7-127-108. Meetings by telecommunication. Unless otherwise provided in the bylaws, any or all of the members may participate in an annual, regular, or special meeting of the members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting.

7-127-109. Action by written ballot. (1) Unless otherwise provided by the bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the nonprofit corporation delivers a written ballot to every member entitled to vote on the matter.

(2) A written ballot shall:

(a) ~~Set forth~~ *State* each proposed action; and

(b) Provide an opportunity to vote for or against each proposed action.

(3) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(4) All solicitations for votes by written ballot shall:

(a) Indicate the number of responses needed to meet the quorum requirements;

(b) State the percentage of approvals necessary to approve each matter other than election of directors;

(c) ~~Specify~~ *State* the time by which a ballot must be received by the nonprofit corporation in order to be counted; and

(d) Be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter.

(5) Unless otherwise provided by the bylaws, a written ballot may not be revoked.

(6) Action taken under this section has the same effect as action taken at a meeting of members and may be described as such in any document.

PART 2 VOTING

7-127-201. Members list for meeting and action by written ballot. (1) Unless otherwise provided by the bylaws, after fixing a record date for a notice of a meeting or for determining the members entitled to take action by written ballot, a nonprofit corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of, and to vote at, the meeting or to take such action by written ballot. The list shall show the address of each member entitled to notice of, and to vote at, the meeting or

to take such action by written ballot and the number of votes each member is entitled to vote at the meeting or by written ballot.

(2) If prepared in connection with a meeting of the members, the members list shall be available for inspection by any member entitled to vote at the meeting, beginning the earlier of ten days before the meeting for which the list was prepared or two business days after notice of the meeting is given and continuing through the meeting, and any adjournment thereof, at the nonprofit corporation's principal office or at a place identified in the notice of the meeting in the city where the meeting will be held. The nonprofit corporation shall make the members list available at the meeting, and any member entitled to vote at the meeting or an agent or attorney of a member entitled to vote at the meeting is entitled to inspect the list at any time during the meeting or any adjournment. If prepared in connection with action to be taken by the members by written ballot, the members list shall be available for inspection by any member entitled to cast a vote by such written ballot, beginning on the date that the first written ballot is delivered to the members and continuing through the time when such written ballots must be received by the nonprofit corporation in order to be counted, at the nonprofit corporation's principal office. A member entitled to vote at the meeting or by such written ballot, or an agent or attorney of a member entitled to vote at the meeting or by such written ballot, is entitled on written demand to inspect and, subject to the requirements of section 7-136-102 (3) and the provisions of section 7-136-103 (2) and (3), to copy the list, during regular business hours, at the member's expense, and during the period it is available for inspection.

(3) If the nonprofit corporation refuses to allow a member entitled to vote at the meeting or by such written ballot, or an agent or attorney of a member entitled to vote at the meeting or by such written ballot, to inspect the members list or to copy the list during the period it is required to be available for inspection under subsection (2) of this section, the district court ~~of for~~ the county in this state ~~where in which the street address of~~ the nonprofit corporation's principal office is located or, if the nonprofit corporation has no principal office in this state, the district court ~~of for~~ the county ~~where in which the street address of~~ its registered ~~office agent~~ is located, or if the nonprofit corporation has no registered ~~office agent~~ in this state, the district court for the city and county of Denver may, on application of the member, summarily order the inspection or copying of the list at the nonprofit corporation's expense and may postpone or adjourn the meeting for which the list was prepared, or postpone the time when the nonprofit corporation must receive written ballots in connection with which the list was prepared, until the inspection or copying is complete.

(4) If a court orders inspection or copying of the list of members pursuant to subsection (3) of this section, unless the nonprofit corporation proves that it refused inspection or copying of the list in good faith because it had a reasonable basis for doubt about the right of the member or the agent or attorney of the member to inspect or copy the list of members:

(a) The court shall also order the nonprofit corporation to pay the member's costs, including reasonable counsel fees, incurred in obtaining the order;

(b) The court may order the nonprofit corporation to pay the member for any damages the member incurred; and

(c) The court may grant the member any other remedy afforded the member by law.

(5) If a court orders inspection or copying of the list of members pursuant to subsection (3) of this section, the court may impose reasonable restrictions on the use or distribution of the list by the member.

(6) Failure to prepare or make available the list of members does not affect the validity of action taken at the meeting or by means of such written ballot.

7-127-202. Voting entitlement generally. (1) Unless otherwise provided by the bylaws:

(a) Only voting members shall be entitled to vote with respect to any matter required or permitted under articles 121 to 137 of this title to be submitted to a vote of the members;

(b) All references in articles 121 to 137 of this title to votes of or voting by the members shall be deemed to permit voting only by the voting members; and

(c) Voting members shall be entitled to vote with respect to all matters required or permitted under articles 121 to 137 of this title to be submitted to a vote of the members.

(2) Unless otherwise provided by the bylaws, each member entitled to vote shall be entitled to one vote on each matter submitted to a vote of members.

(3) Unless otherwise provided by the bylaws, if a membership stands of record in the names of two or more persons, their acts with respect to voting shall have the following effect:

(a) If only one votes, such act binds all; and

(b) If more than one votes, the vote shall be divided on a pro-rata basis.

7-127-203. Proxies. (1) Unless otherwise provided by the bylaws, a member entitled to vote may vote or otherwise act in person or by proxy.

(2) Without limiting the manner in which a member may appoint a proxy to vote or otherwise act for the member, the following shall constitute valid means of such appointment:

(a) A member may appoint a proxy by signing an appointment form, either personally or by the member's attorney-in-fact.

(b) A member may appoint a proxy by transmitting or authorizing the transmission of a telegram, teletype, or other electronic transmission providing a written statement of the appointment to the proxy, to a proxy solicitor, proxy support service organization, or other person duly authorized by the proxy to receive appointments as agent for the proxy or to the nonprofit corporation; except that the transmitted appointment shall set forth or be transmitted with written evidence from which it can be determined that the member transmitted or authorized the transmission of the appointment.

(3) An appointment of a proxy is effective against the nonprofit corporation when received by the nonprofit corporation, including receipt by the nonprofit corporation of an appointment transmitted pursuant to paragraph (b) of subsection (2) of this section. An appointment is valid for eleven months unless a different period is expressly provided in the appointment form.

(4) Any complete copy, including an electronically transmitted facsimile, of an appointment of a proxy may be substituted for or used in lieu of the original appointment for any purpose for which the original appointment could be used.

(5) An appointment of a proxy is revocable by the member.

(6) Appointment of a proxy is revoked by the person appointing the proxy:

(a) Attending any meeting and voting in person; or

(b) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(7) The death or incapacity of the member appointing a proxy does not affect the right of the nonprofit corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

(8) Subject to section 7-127-204 and to any express limitation on the proxy's authority appearing on the appointment form, a nonprofit corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

7-127-204. Nonprofit corporation's acceptance of votes. (1) If the name signed on a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation corresponds to the name of a member, the nonprofit corporation, if acting in good faith, is entitled to accept the vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation and to give it effect as the act of the member.

(2) If the name signed on a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation does not correspond to the name of a member, the nonprofit corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation and to give it effect as the act of the member if:

(a) The member is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the nonprofit corporation requests, evidence of fiduciary status acceptable to the nonprofit corporation has been presented with respect to the vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation;

(c) The name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the nonprofit corporation requests, evidence of this status acceptable to the nonprofit corporation has been presented with respect to the vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation;

(d) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the member and, if the nonprofit corporation requests, evidence acceptable to the nonprofit corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation;

(e) Two or more persons are the member as cotenants or fiduciaries and the name signed purports to be the name of at least one of the cotenants or fiduciaries and the person signing appears to be acting on behalf of all the cotenants or fiduciaries; or

(f) The acceptance of the vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation is otherwise proper under rules established by the nonprofit corporation that are not inconsistent with the provisions of this subsection (2).

(3) The nonprofit corporation is entitled to reject a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

(4) The nonprofit corporation and its officer or agent who accepts or rejects a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation in good faith and in accordance with the standards of this section are not liable in damages for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation under this section is valid unless a court of competent jurisdiction determines otherwise.

7-127-205. Quorum and voting requirements for voting groups. (1) Members entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those members exists with respect to that matter. Unless otherwise provided in articles 121 to 137 of this title or the bylaws, twenty-five percent of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(2) Once a member is represented for any purpose at a meeting, including the purpose of determining that a quorum exists, the member is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting, unless otherwise provided in the bylaws or unless a new record date is or shall be set for that adjourned meeting.

(3) If a quorum exists, action on a matter other than the election of directors by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast within the voting group opposing the action, unless a greater number of affirmative votes is required by articles 121 to 137 of this title or the bylaws.

(4) An amendment to the articles of incorporation or the bylaws adding, changing, or deleting a quorum or voting requirement for a voting group greater than that specified in subsection (1) or (3) of this section is governed by section 7-127-207 (2).

(5) The election of directors is governed by section 7-127-208.

7-127-206. Action by single and multiple voting groups. (1) If articles 121 to 137 of this title or the bylaws provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in section 7-127-205.

(2) If articles 121 to 137 of this title or the bylaws provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section 7-127-205. One voting group may vote on a matter even though no action is taken by another voting group entitled to vote on the matter.

7-127-207. Lesser or greater quorum or greater voting requirements. (1) The bylaws may provide for a lesser or a greater quorum requirement, or a greater voting requirement for members or voting groups than is provided for by articles 121 to 137 of this title.

(2) An amendment to the articles of incorporation or the bylaws that adds, changes, or deletes a lesser or a greater quorum requirement or a greater voting requirement shall meet the same quorum

requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

7-127-208. Voting for directors - cumulative voting. (1) If the bylaws provide for cumulative voting for directors by the voting members, voting members may so vote, by multiplying the number of votes the voting members are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

(2) Cumulative voting is not authorized at a particular meeting unless:

(a) The meeting notice or statement accompanying the notice states that cumulative voting will take place; or

(b) A voting member gives notice during the meeting and before the vote is taken of the voting member's intent to cumulate votes, and if one voting member gives this notice all other voting members participating in the election are entitled to cumulate their votes without giving further notice.

(3) If cumulative voting is in effect, a director may not be removed if the number of votes cast against such removal, or not consenting in writing to such removal, would be sufficient to elect such director if voted cumulatively at an election for such director.

(4) Members may not vote cumulatively if the directors and members are identical.

(5) In an election of multiple directors, that number of candidates equaling the number of directors to be elected, having the highest number of votes cast in favor of their election, are elected to the board of directors. When only one director is being voted upon, the affirmative vote of a majority of the members constituting a quorum at the meeting at which the election occurs shall be required for election to the board of directors.

7-127-209. Other methods of electing directors. (1) A nonprofit corporation may provide in its bylaws for election of directors by voting members or delegates:

(a) On the basis of chapter or other organizational unit;

(b) By region or other geographic unit;

(c) By preferential voting; or

(d) By any other reasonable method.

PART 3 VOTING AGREEMENTS

7-127-301. Voting agreements. (1) Two or more members may provide for the manner in which they will vote by signing an agreement for that purpose.

(2) A voting agreement created under this section is specifically enforceable.

ARTICLE 128 Directors and Officers

PART 1
BOARD OF DIRECTORS

7-128-101. Requirement for board of directors. (1) Unless otherwise provided in the articles of incorporation, each nonprofit corporation shall have a board of directors. The board of directors and the directors may be known by any other names designated in the bylaws.

(2) Subject to any provision ~~set forth~~ *stated* in the articles of incorporation, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the nonprofit corporation managed under the direction of, the board of directors or such other persons as the articles of incorporation provide shall have the authority and perform the duties of a board of directors. To the extent the articles of incorporation provide that other persons shall have the authority and perform the duties of the board of directors, the directors shall be relieved to that extent from such authority and duties.

7-128-102. Qualifications of directors. A director shall be a natural person who is eighteen years of age or older. The bylaws may prescribe other qualifications for directors. A director need not be a resident of this state or a member of the nonprofit corporation unless the bylaws so prescribe.

7-128-103. Number of directors. (1) A board of directors shall consist of one or more directors, with the number ~~specified~~ *stated* in, or fixed in accordance with, the bylaws.

(2) The bylaws may establish, or permit the voting members or the board of directors to establish, a range for the size of the board of directors by fixing a minimum and maximum number of directors. If a range is established, the number of directors may be fixed or changed from time to time within the range by the voting members or the board of directors.

7-128-104. Election, appointment, and designation of directors. (1) All directors except the initial directors shall be elected, appointed, or designated as provided in the bylaws. If no method of election, appointment, or designation is ~~set forth~~ *stated* in the bylaws, the directors other than the initial directors shall be elected as follows:

(a) If the nonprofit corporation has voting members, all directors except the initial directors shall be elected by the voting members at each annual meeting of the voting members; and

(b) If the nonprofit corporation does not have voting members, all directors except the initial directors shall be elected by the board of directors.

(2) The bylaws may authorize the election of all or a ~~specified~~ *stated* number or portion of directors, except the initial directors, by the members of one or more voting groups of voting members or by the directors of one or more authorized classes of directors. A class of voting members or directors entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

(3) The bylaws may authorize the appointment of one or more directors by such person or persons, or by the holder of such office or position, as the bylaws shall ~~specify~~ *state*.

(4) For purposes of articles 121 to 137 of this title, designation occurs when the bylaws name an individual as a director or designate the holder of some office or position as a director.

7-128-105. Terms of directors generally. (1) The bylaws may **specify state** the terms of directors. In the absence of any term **specified stated** in the bylaws, the term of each director shall be one year. Unless otherwise provided in the bylaws, directors may be elected for successive terms.

(2) Unless otherwise provided in the bylaws, the terms of the initial directors of a nonprofit corporation expire at the first meeting at which directors are elected or appointed.

(3) A decrease in the number of directors or in the term of office does not shorten an incumbent director's term.

(4) Unless otherwise provided in the bylaws, the term of a director filling a vacancy expires at the end of the unexpired term that such director is filling.

(5) Despite the expiration of a director's term, a director continues to serve until the director's successor is elected, appointed, or designated and qualifies, or until there is a decrease in the number of directors.

(6) A director whose term has ended may deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement to that effect pursuant to section 7-90-502.

7-128-106. Staggered terms for directors. The bylaws may provide for staggering the terms of directors by dividing the total number of directors into any number of groups. The terms of office of the several groups need not be uniform.

7-128-107. Resignation of directors. (1) A director may resign at any time by giving written notice of resignation to the nonprofit corporation.

(2) A resignation of a director is effective when the notice is received by the nonprofit corporation unless the notice **specifies states** a later effective date.

(3) A director who resigns may deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement to that effect pursuant to section 7-90-502.

(4) If, at the beginning of a director's term on the board, the bylaws provide that a director may be deemed to have resigned for failing to attend a **specified stated** number of board meetings, or for failing to meet other **specified stated** obligations of directors, and if such failure to attend or meet obligations is confirmed by an affirmative vote of the board of directors, then such failure to attend or meet obligations shall be effective as a resignation at the time of such vote of the board.

7-128-108. Removal of directors. (1) Directors elected by voting members or directors may be removed as follows:

(a) The voting members may remove one or more directors elected by them with or without cause unless the bylaws provide that directors may be removed only for cause.

(b) If a director is elected by a voting group, only that voting group may participate in the vote to remove that director.

(c) Subject to section 7-127-208 (3), a director may be removed only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(d) A director elected by voting members may be removed by the voting members only at a meeting called for the purpose of removing that director, and the meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of the director.

(e) An entire board of directors may be removed under paragraphs (a) to (d) of this subsection (1).

(f) A director elected by the board of directors may be removed with or without cause by the vote of a majority of the directors then in office or such greater number as is **set forth stated** in the bylaws; except that a director elected by the board of directors to fill the vacancy of a director elected by the voting members may be removed without cause by the voting members, but not the board of directors.

(g) (Deleted by amendment, L. 2000, p. 983, § 83, effective July 1, 2000.)

(2) Unless otherwise provided in the bylaws:

(a) An appointed director may be removed without cause by the person appointing the director;

(b) The person removing the director shall do so by giving written notice of the removal to the director and to the nonprofit corporation; and

(c) A removal is effective when the notice is received by both the director to be removed and the nonprofit corporation unless the notice **specifies states a future later** effective date.

(3) A designated director may be removed by an amendment to the bylaws deleting or changing the designation.

(4) A director who is removed pursuant to this section may deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement to that effect pursuant to section 7-90-502.

7-128-109. Removal of directors by judicial proceeding. (1) A director may be removed by the district court **of for** the county in this state ~~where a~~ **in which the address of the** nonprofit corporation's principal office is located or, if the nonprofit corporation has no principal office in this state, by the district court **of for** the county in which **the street address of** its registered **office agent** is located, or, if the nonprofit corporation has no registered **office agent**, by the district court for the city and county of Denver, in a proceeding commenced either by the nonprofit corporation or by voting members holding at least ten percent of the votes entitled to be cast in the election of such director's successor, if the court finds that the director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the nonprofit corporation, or a final judgment has been entered finding that the director has violated a duty set forth in part 4 of this article, and that removal is in the best interests of the nonprofit corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(3) If voting members commence a proceeding under subsection (1) of this section, they shall make the nonprofit corporation a party defendant.

(4) A director who is removed pursuant to this section may deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement to that effect pursuant to section 7-90-502.

7-128-110. Vacancy on board. (1) Unless otherwise provided in the bylaws, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) The voting members, if any, may fill the vacancy;

(b) The board of directors may fill the vacancy; or

(c) If the directors remaining in office constitute fewer than a quorum of the board of directors, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) Notwithstanding subsection (1) of this section, unless otherwise provided in the bylaws, if the vacant office was held by a director elected by a voting group of voting members:

(a) If one or more of the remaining directors were elected by the same voting group of voting members, only such directors are entitled to vote to fill the vacancy if it is filled by directors, and they may do so by the affirmative vote of a majority of such directors remaining in office; and

(b) Only that voting group is entitled to vote to fill the vacancy if it is filled by the voting members.

(3) Notwithstanding subsection (1) of this section, unless otherwise provided in the bylaws, if the vacant office was held by a director elected by a voting group of directors, and if any persons in that voting group remain as directors, only such directors are entitled to vote to fill the vacancy.

(4) Unless otherwise provided in the bylaws, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(5) If a vacant office was held by a designated director, the vacancy shall be filled as provided in the bylaws. In the absence of an applicable bylaw provision, the vacancy may not be filled by the board.

(6) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under section 7-128-107 (2) or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

7-128-111. Compensation of directors. Unless otherwise provided in the bylaws, the board of directors may authorize and fix the compensation of directors.

PART 2 MEETINGS AND ACTION OF THE BOARD

7-128-201. Meetings. (1) The board of directors may hold regular or special meetings in or out of this state.

(2) Unless otherwise provided in the bylaws, the board of directors may permit any director to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

7-128-202. Action without meeting. (1) Unless otherwise provided in the bylaws, any action required or permitted by articles 121 to 137 of this title to be taken at a board of directors' meeting may be taken without a meeting if each and every member of the board in writing either:

(a) Votes for such action; or

(b) (I) Votes against such action or abstains from voting; and

(II) Waives the right to demand that action not be taken without a meeting.

(2) Action is taken under this section only if the affirmative vote for such action equals or exceeds the minimum number of votes that would be necessary to take such action at a meeting at which all of the directors then in office were present and voted.

(3) No action taken pursuant to this section shall be effective unless writings describing the action taken and otherwise satisfying the requirements of subsection (1) of this section, signed by all directors and not revoked pursuant to subsection (4) of this section, are received by the nonprofit corporation. Unless otherwise provided by the bylaws, any such writing may be received by the nonprofit corporation by electronically transmitted facsimile or other form of wire or wireless communication providing the nonprofit corporation with a complete copy of the document, including a copy of the signature on the document. A director's right to demand that action not be taken without a meeting shall be deemed to have been waived if the nonprofit corporation receives a writing satisfying the requirements of subsection (1) of this section that has been signed by the director and not revoked pursuant to subsection (4) of this section. Action taken pursuant to this section shall be effective when the last writing necessary to effect the action is received by the nonprofit corporation unless the writings describing the action taken ~~set forth~~ *state* a different effective date.

(4) Any director who has signed a writing pursuant to this section may revoke such writing by a writing signed and dated by the director describing the action and stating that the director's prior vote with respect thereto is revoked, if such writing is received by the nonprofit corporation before the last writing necessary to effect the action is received by the nonprofit corporation.

(5) Action taken pursuant to this section has the same effect as action taken at a meeting of directors and may be described as such in any document.

(6) All signed written instruments necessary for any action taken pursuant to this section shall be filed with the minutes of the meetings of the board of directors.

7-128-203. Notice of meeting. (1) Unless otherwise provided in articles 121 to 137 of this title or in the bylaws, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless otherwise required by articles 121 to 137 of this title or the bylaws.

7-128-204. Waiver of notice. (1) A director may waive any notice of a meeting before or after the time and date of the meeting stated in the notice. Except as provided by subsection (2) of this section, the waiver shall be in writing and signed by the director entitled to the notice. Such waiver shall be delivered

to the nonprofit corporation for filing with the corporate records, but such delivery and filing shall not be conditions of the effectiveness of the waiver.

(2) A director's attendance at or participation in a meeting waives any required notice to that director of the meeting unless:

(a) At the beginning of the meeting or promptly upon the director's later arrival, the director objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice and does not thereafter vote for or assent to action taken at the meeting; or

(b) If special notice was required of a particular purpose pursuant to section 7-128-203 (2), the director objects to transacting business with respect to the purpose for which such special notice was required and does not thereafter vote for or assent to action taken at the meeting with respect to such purpose.

7-128-205. Quorum and voting. (1) Unless a greater or lesser number is required by the bylaws, a quorum of a board of directors consists of a majority of the number of directors in office immediately before the meeting begins.

(2) The bylaws may authorize a quorum of a board of directors to consist of:

(a) No fewer than one-third of the number of directors fixed if the corporation has a fixed board size; or

(b) No fewer than one-third of the number of directors fixed or, if no number is fixed, of the number in office immediately before the meeting begins, if a range for the size of the board is established pursuant to section 7-128-103 (2).

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the vote of a greater number of directors is required by articles 121 to 137 of this title or the bylaws.

(4) If provided in the bylaws, for purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a director may be deemed to be present at a meeting and to vote if the director has granted a signed written proxy to another director who is present at the meeting, authorizing the other director to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy. Except as provided in this subsection (4) and as permitted by section 7-128-202, directors may not vote or otherwise act by proxy.

(5) A director who is present at a meeting of the board of directors when corporate action is taken is deemed to have assented to all action taken at the meeting unless:

(a) The director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any action taken at the meeting;

(b) The director contemporaneously requests that the director's dissent or abstention as to any specific action taken be entered in the minutes of the meeting; or

(c) The director causes written notice of the director's dissent or abstention as to any specific action to be received by the presiding officer of the meeting before adjournment of the meeting or by the nonprofit corporation promptly after adjournment of the meeting.

(6) The right of dissent or abstention pursuant to subsection (5) of this section as to a specific action is not available to a director who votes in favor of the action taken.

7-128-206. Committees of the board. (1) Unless otherwise provided in the bylaws and subject to the provisions of section 7-129-106, the board of directors may create one or more committees of the board and appoint one or more directors to serve on them.

(2) Unless otherwise provided in the bylaws, the creation of a committee of the board and appointment of directors to it shall be approved by the greater of a majority of all the directors in office when the action is taken or the number of directors required by the bylaws to take action under section 7-128-205.

(3) Unless otherwise provided in the bylaws, sections 7-128-201 to 7-128-205, which govern meetings, action without meeting, notice, waiver of notice, and quorum and voting requirements of the board of directors, apply to committees of the board and their members as well.

(4) To the extent **specified stated** in the bylaws or by the board of directors, each committee of the board shall have the authority of the board of directors under section 7-128-101; except that a committee of the board shall not:

(a) Authorize distributions;

(b) Approve or propose to members action that articles 121 to 137 of this title require to be approved by members;

(c) Elect, appoint, or remove any director;

(d) Amend articles of incorporation pursuant to section 7-130-102;

(e) Adopt, amend, or repeal bylaws;

(f) Approve a plan of merger not requiring member approval; or

(g) Approve a sale, lease, exchange, or other disposition of all, or substantially all, of its property, with or without goodwill, otherwise than in the usual and regular course of business subject to approval by members.

(5) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 7-128-401.

(6) Nothing in this part 2 shall prohibit or restrict a nonprofit corporation from establishing in its bylaws or by action of the board of directors or otherwise one or more committees, advisory boards, auxiliaries, or other bodies of any kind, having such members and rules of procedure as the bylaws or board of directors may provide, in order to provide such advice, service, and assistance to the nonprofit corporation, and to carry out such duties and responsibilities for the nonprofit corporation, as may be **specified stated** in the bylaws or by the board of directors; except that, if any such committee or other body has one or more members thereof who are entitled to vote on committee matters and who are not then also

directors, such committee or other body may not exercise any power or authority reserved to the board of directors in articles 121 to 137 of this title, in the articles of incorporation, or in the bylaws.

PART 3 OFFICERS

7-128-301. Officers. (1) Unless otherwise provided in the bylaws, a nonprofit corporation shall have a president, a secretary, a treasurer, and such other officers as may be designated by the board of directors. An officer shall be a natural person who is eighteen years of age or older. An officer need not be a director or a member of the nonprofit corporation, unless the bylaws so prescribe.

(2) Officers may be appointed by the board of directors or in such other manner as the board of directors or bylaws may provide. A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall delegate to the secretary or to one or more other persons responsibility for the preparation and maintenance of minutes of the directors' and members' meetings and other records and information required to be kept by the nonprofit corporation under section 7-136-101 and for authenticating records of the nonprofit corporation.

(4) The same individual may simultaneously hold more than one office in the nonprofit corporation.

7-128-302. Duties of officers. Each officer shall have the authority and shall perform the duties ~~set forth~~ *stated* with respect to such office in the bylaws or, to the extent not inconsistent with the bylaws, prescribed with respect to such office by the board of directors or by an officer authorized by the board of directors.

7-128-303. Resignation and removal of officers.(1) An officer may resign at any time by giving written notice of resignation to the nonprofit corporation.

(2) A resignation of an officer is effective when the notice is received by the nonprofit corporation unless the notice **specifies states** a later effective date.

(3) If a resignation is made effective at a later date, the board of directors may permit the officer to remain in office until the effective date and may fill the pending vacancy before the effective date with the provision that the successor does not take office until the effective date, or the board of directors may remove the officer at any time before the effective date and may fill the resulting vacancy.

(4) Unless otherwise provided in the bylaws, the board of directors may remove any officer at any time with or without cause. The bylaws or the board of directors may make provisions for the removal of officers by other officers or by the voting members.

(5) An officer who resigns or is removed or whose appointment has expired may deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement to that effect pursuant to section 7-90-502.

7-128-304. Contract rights with respect to officers. (1) The appointment of an officer does not itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the nonprofit corporation. An officer's resignation does not affect the nonprofit corporation's contract rights, if any, with the officer.

PART 4 STANDARDS OF CONDUCT

7-128-401. General standards of conduct for directors and officers. (1) Each director shall discharge the director's duties as a director, including the director's duties as a member of a committee of the board, and each officer with discretionary authority shall discharge the officer's duties under that authority:

- (a) In good faith;
 - (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
 - (c) In a manner the director or officer reasonably believes to be in the best interests of the nonprofit corporation.
- (2) In discharging duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
- (a) One or more officers or employees of the nonprofit corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented;
 - (b) Legal counsel, a public accountant, or another person as to matters the director or officer reasonably believes are within such person's professional or expert competence;
 - (c) Religious authorities or ministers, priests, rabbis, or other persons whose position or duties in the nonprofit corporation, or in a religious organization with which the nonprofit corporation is affiliated, the director or officer believes justify reliance and confidence and who the director or officer believes to be reliable and competent in the matters presented; or
 - (d) In the case of a director, a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.
- (3) A director or officer is not acting in good faith if the director or officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.
- (4) A director or officer is not liable as such to the nonprofit corporation or its members for any action taken or omitted to be taken as a director or officer, as the case may be, if, in connection with such action or omission, the director or officer performed the duties of the position in compliance with this section.
- (5) A director, regardless of title, shall not be deemed to be a trustee with respect to the nonprofit corporation or with respect to any property held or administered by the nonprofit corporation including, without limitation, property that may be subject to restrictions imposed by the donor or transferor of such property.

7-128-402. Limitation of certain liabilities of directors and officers. (1) If so provided in the articles of incorporation, the nonprofit corporation shall eliminate or limit the personal liability of a director to the nonprofit corporation or to its members for monetary damages for breach of fiduciary duty as a director; except that any such provision shall not eliminate or limit the liability of a director to the nonprofit corporation or to its members for monetary damages for any breach of the director's duty of loyalty to the nonprofit corporation or to its members, acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, acts specified in section 7-128-403 or 7-128-501 (2), or any transaction from which the director directly or indirectly derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director to the nonprofit corporation or to its members for monetary damages for any act or omission occurring before the date when such provision becomes effective.

(2) No director or officer shall be personally liable for any injury to person or property arising out of a tort committed by an employee unless such director or officer was personally involved in the situation giving rise to the litigation or unless such director or officer committed a criminal offense in connection with such situation. The protection afforded in this subsection (2) shall not restrict other common law protections and rights that a director or officer may have. This subsection (2) shall not restrict the nonprofit corporation's right to eliminate or limit the personal liability of a director to the nonprofit corporation or to its members for monetary damages for breach of fiduciary duty as a director as provided in subsection (1) of this section.

7-128-403. Liability of directors for unlawful distributions. (1) A director who votes for or assents to a distribution made in violation of section 7-133-101 or the articles of incorporation is personally liable to the nonprofit corporation for the amount of the distribution that exceeds what could have been distributed without violating said section or the articles of incorporation if it is established that the director did not perform the director's duties in compliance with section 7-128-401. In any proceeding commenced under this section, a director shall have all of the defenses ordinarily available to a director.

(2) A director held liable under subsection (1) of this section for an unlawful distribution is entitled to contribution:

(a) From every other director who could be held liable under subsection (1) of this section for the unlawful distribution; and

(b) From each person who accepted the distribution knowing the distribution was made in violation of section 7-133-101 or the articles of incorporation, the amount of the contribution from such person being the amount of the distribution to that person that exceeds what could have been distributed to that person without violating section 7-133-101 or the articles of incorporation.

PART 5
DIRECTORS' CONFLICTING
INTEREST TRANSACTIONS

7-128-501. Conflicting interest transaction. (1) As used in this section, "conflicting interest transaction" means: A contract, transaction, or other financial relationship between a nonprofit corporation and a director of the nonprofit corporation, or between the nonprofit corporation and a party related to a director, or between the nonprofit corporation and an entity in which a director of the nonprofit corporation is a director or officer or has a financial interest.

(2) No loans shall be made by a corporation to its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until the repayment thereof.

(3) No conflicting interest transaction shall be void or voidable or be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a member or by or in the right of the nonprofit corporation, solely because the conflicting interest transaction involves a director of the nonprofit corporation or a party related to a director or an entity in which a director of the nonprofit corporation is a director or officer or has a financial interest or solely because the director is present at or participates in the meeting of the nonprofit corporation's board of directors or of the committee of the board of directors that authorizes, approves, or ratifies the conflicting interest transaction or solely because the director's vote is counted for such purpose if:

(a) The material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the board of directors or the committee, and the board of directors or committee in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors are less than a quorum; or

(b) The material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the members entitled to vote thereon, and the conflicting interest transaction is specifically authorized, approved, or ratified in good faith by a vote of the members entitled to vote thereon; or

(c) The conflicting interest transaction is fair as to the nonprofit corporation.

(4) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes, approves, or ratifies the conflicting interest transaction.

(5) For purposes of this section, a "party related to a director" shall mean a spouse, a descendant, an ancestor, a sibling, the spouse or descendent of a sibling, an estate or trust in which the director or a party related to a director has a beneficial interest, or an entity in which a party related to a director is a director, officer, or has a financial interest.

ARTICLE 129 Indemnification

7-129-101. Indemnification definitions. As used in this article:

(1) "Director" means an individual who is or was a director of a nonprofit corporation or an individual who, while a director of a nonprofit corporation, is or was serving at the nonprofit corporation's request as a director, officer, partner, member, manager, trustee, employee, fiduciary, or agent of another domestic or foreign ~~corporation, nonprofit corporation, or other person entity~~ or of an employee benefit plan. A director is considered to be serving an employee benefit plan at the nonprofit corporation's request if the director's duties to the nonprofit corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

(2) "Expenses" includes counsel fees.

(3) "Liability" means the obligation incurred with respect to a proceeding to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses.

(4) "Nonprofit corporation" includes any domestic or foreign entity that is a predecessor of a nonprofit corporation by reason of a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(5) "Official capacity" means, when used with respect to a director, the office of director in a nonprofit corporation and, when used with respect to a person other than a director as contemplated in section 7-129-107, the office in a nonprofit corporation held by the officer or the employment, fiduciary, or agency relationship undertaken by the employee, fiduciary, or agent on behalf of the nonprofit corporation. "Official capacity" does not include service for any other domestic or foreign corporation, nonprofit corporation, or other person or employee benefit plan.

(6) "Party" includes a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

7-129-102. Authority to indemnify directors. (1) Except as provided in subsection (4) of this section, a nonprofit corporation may indemnify a person made a party to a proceeding because the person is or was a director against liability incurred in the proceeding if:

(a) The person's conduct was in good faith; and

(b) The person reasonably believed:

(I) In the case of conduct in an official capacity with the nonprofit corporation, that the conduct was in the nonprofit corporation's best interests; and

(II) In all other cases, that the conduct was at least not opposed to the nonprofit corporation's best interests; and

(c) In the case of any criminal proceeding, the person had no reasonable cause to believe the conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in or beneficiaries of the plan is conduct that satisfies the requirement of subparagraph (II) of paragraph (b) of subsection (1) of this section. A director's conduct with respect to an employee benefit plan for a purpose that the director did not reasonably believe to be in the interests of the participants in or beneficiaries of the plan shall be deemed not to satisfy the requirements of paragraph (a) of subsection (1) of this section.

(3) The termination of a proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(4) A nonprofit corporation may not indemnify a director under this section:

(a) In connection with a proceeding by or in the right of the nonprofit corporation in which the director was adjudged liable to the nonprofit corporation; or

(b) In connection with any other proceeding charging that the director derived an improper personal benefit, whether or not involving action in an official capacity, in which proceeding the director was adjudged liable on the basis that the director derived an improper personal benefit.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the nonprofit corporation is limited to reasonable expenses incurred in connection with the proceeding.

7-129-103. Mandatory indemnification of directors. Unless limited by its articles of incorporation, a nonprofit corporation shall indemnify a person who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the person was a party because the person is or was a director, against reasonable expenses incurred by the person in connection with the proceeding.

7-129-104. Advance of expenses to directors. (1) A nonprofit corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) The director furnishes to the nonprofit corporation a written affirmation of the director's good faith belief that the director has met the standard of conduct described in section 7-129-102;

(b) The director furnishes to the nonprofit corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and

(c) A determination is made that the facts then known to those making the determination would not preclude indemnification under this article.

(2) The undertaking required by paragraph (b) of subsection (1) of this section shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section shall be made in the manner specified in section 7-129-106.

7-129-105. Court-ordered indemnification of directors. (1) Unless otherwise provided in the articles of incorporation, a director who is or was a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification in the following manner:

(a) If it determines that the director is entitled to mandatory indemnification under section 7-129-103, the court shall order indemnification, in which case the court shall also order the nonprofit corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification.

(b) If it determines that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in section 7-129-102 (1) or was adjudged liable in the circumstances described in section 7-129-102 (4), the court may order such indemnification as the court deems proper; except that the indemnification with respect to any

proceeding in which liability shall have been adjudged in the circumstances described in section 7-129-102 (4) is limited to reasonable expenses incurred in connection with the proceeding and reasonable expenses incurred to obtain court-ordered indemnification.

7-129-106. Determination and authorization of indemnification of directors. (1) A nonprofit corporation may not indemnify a director under section 7-129-102 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in section 7-129-102. A nonprofit corporation shall not advance expenses to a director under section 7-129-104 unless authorized in the specific case after the written affirmation and undertaking required by section 7-129-104 (1) (a) and (1) (b) are received and the determination required by section 7-129-104 (1) (c) has been made.

(2) The determinations required by subsection (1) of this section shall be made:

(a) By the board of directors by a majority vote of those present at a meeting at which a quorum is present, and only those directors not parties to the proceeding shall be counted in satisfying the quorum; or

(b) If a quorum cannot be obtained, by a majority vote of a committee of the board of directors designated by the board of directors, which committee shall consist of two or more directors not parties to the proceeding; except that directors who are parties to the proceeding may participate in the designation of directors for the committee.

(3) If a quorum cannot be obtained as contemplated in paragraph (a) of subsection (2) of this section, and a committee cannot be established under paragraph (b) of subsection (2) of this section, or, even if a quorum is obtained or a committee is designated, if a majority of the directors constituting such quorum or such committee so directs, the determination required to be made by subsection (1) of this section shall be made:

(a) By independent legal counsel selected by a vote of the board of directors or the committee in the manner specified in paragraph (a) or (b) of subsection (2) of this section or, if a quorum of the full board cannot be obtained and a committee cannot be established, by independent legal counsel selected by a majority vote of the full board of directors; or

(b) By the voting members, but voting members who are also directors and who are at the time seeking indemnification may not vote on the determination.

(4) Authorization of indemnification and advance of expenses shall be made in the same manner as the determination that indemnification or advance of expenses is permissible; except that, if the determination that indemnification or advance of expenses is permissible is made by independent legal counsel, authorization of indemnification and advance of expenses shall be made by the body that selected such counsel.

7-129-107. Indemnification of officers, employees, fiduciaries, and agents. (1) Unless otherwise provided in the articles of incorporation:

(a) An officer is entitled to mandatory indemnification under section 7-129-103, and is entitled to apply for court-ordered indemnification under section 7-129-105, in each case to the same extent as a director;

(b) A nonprofit corporation may indemnify and advance expenses to an officer, employee, fiduciary, or agent of the nonprofit corporation to the same extent as to a director; and

(c) A nonprofit corporation may also indemnify and advance expenses to an officer, employee, fiduciary, or agent who is not a director to a greater extent, if not inconsistent with public policy, and if provided for by its bylaws, general or specific action of its board of directors or voting members, or contract.

7-129-108. Insurance. A nonprofit corporation may purchase and maintain insurance on behalf of a person who is or was a director, officer, employee, fiduciary, or agent of the nonprofit corporation, or who, while a director, officer, employee, fiduciary, or agent of the nonprofit corporation, is or was serving at the request of the nonprofit corporation as a director, officer, partner, member, manager, trustee, employee, fiduciary, or agent of ~~another any~~ domestic or foreign ~~corporation, nonprofit corporation, or other person entity~~ or of ~~an any~~ employee benefit plan, against liability asserted against or incurred by the person in that capacity or arising from the person's status as a director, officer, employee, fiduciary, or agent, whether or not the nonprofit corporation would have power to indemnify the person against the same liability under section 7-129-102, 7-129-103, or 7-129-107. Any such insurance may be procured from any insurance company designated by the board of directors, whether such insurance company is formed under the ~~laws law~~ of this state or any other jurisdiction ~~of the United States or elsewhere~~, including any insurance company in which the nonprofit corporation has an equity or any other interest through stock ownership or otherwise.

7-129-109. Limitation of indemnification of directors. (1) A provision treating a nonprofit corporation's indemnification of, or advance of expenses to, directors that is contained in its articles of incorporation or bylaws, in a resolution of its members or board of directors, or in a contract, except an insurance policy, or otherwise, is valid only to the extent the provision is not inconsistent with sections 7-129-101 to 7-129-108. If the articles of incorporation limit indemnification or advance of expenses, indemnification and advance of expenses are valid only to the extent not inconsistent with the articles of incorporation.

(2) Sections 7-129-101 to 7-129-108 do not limit a nonprofit corporation's power to pay or reimburse expenses incurred by a director in connection with an appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent in the proceeding.

7-129-110. Notice to voting members of indemnification of director. If a nonprofit corporation indemnifies or advances expenses to a director under this article in connection with a proceeding by or in the right of the nonprofit corporation, the nonprofit corporation shall give written notice of the indemnification or advance to the voting members with or before the notice of the next voting members' meeting. If the next voting member action is taken without a meeting at the instigation of the board of directors, such notice shall be given to the voting members at or before the time the first voting member signs a writing consenting to such action.

ARTICLE 130

Amendment of Articles of Incorporation and Bylaws

PART 1 AMENDMENT OF ARTICLES OF INCORPORATION

7-130-101. Authority to amend articles of incorporation. (1) A nonprofit corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

(2) A member does not have a vested property right resulting from any provision in the articles of incorporation or the bylaws, including any provision relating to management, control, purpose, or duration of the nonprofit corporation.

7-130-102. Amendment of articles of incorporation by board of directors or incorporators. (1) Unless otherwise provided in the articles of incorporation, the board of directors may adopt, without member approval, one or more amendments to the articles of incorporation to:

(a) Delete *the statement of* the names and addresses of *the incorporators or of* the initial directors;

(b) Delete *the statement of* the *registered agent* name and *registered agent* address of the initial registered agent ~~or registered office~~, if a statement of change *changing the registered agent name and registered agent address of the registered agent* is on file with the secretary of state;

(b.5) *Delete the statement of the names and addresses of any or all of the individuals named in the articles of incorporation, pursuant to section 7-90-301 (6), as being individuals who caused the articles of incorporation to be delivered for filing;*

(c) Extend the duration of the nonprofit corporation if it was incorporated at a time when limited duration was required by law;

(d) Change the *domestic* entity name by substituting the word "corporation", "incorporated", "company", or "limited", or an abbreviation of any such word for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution; or

<p>311. <i>Reason for no change:</i> Section 7-90-601(1) provides that any domestic entity name — which would include a domestic entity name adopted by the board under this subsection — must comply with the requirements of part 6 of article 90. But this section otherwise remains necessary to describe and limit the board's power to effect these permitted small changes in the corporation's name without shareholder approval.</p>

(e) Make any other change expressly permitted by articles 121 to 137 of this title to be made without member action.

(2) The board of directors may adopt, without member action, one or more amendments to the articles of incorporation to change the entity name, if necessary, in connection with the reinstatement of a nonprofit corporation pursuant to ~~section 7-134-203~~ *part 10 of article 90 of this title.*

(3) If a nonprofit corporation has no members or no members entitled to vote on amendments or no members yet admitted to membership, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one or more amendments to the nonprofit corporation's articles of incorporation subject to any approval required pursuant to section 7-130-301. The nonprofit corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice shall be in

accordance with section 7-128-203. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the articles of incorporation and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment shall be approved by a majority of the incorporators, until directors have been chosen, and thereafter by a majority of the directors in office at the time the amendment is adopted.

7-130-103. Amendment of articles of incorporation by board of directors and members. (1) Unless articles 121 to 137 of this title, the articles of incorporation, the bylaws, or the members or the board of directors acting pursuant to subsection (5) of this section require a different vote or voting by class, the board of directors or the members representing at least ten percent of all of the votes entitled to be cast on the amendment may propose an amendment to the articles of incorporation for submission to the members.

(2) For an amendment to the articles of incorporation to be adopted pursuant to subsection (1) of this section:

(a) The board of directors shall recommend the amendment to the members unless the amendment is proposed by members or unless the board of directors determines that, because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the members with the amendment; and

(b) The members entitled to vote on the amendment shall approve the amendment as provided in subsection (5) of this section.

(3) The proposing board of directors or the proposing members may condition the effectiveness of the amendment on any basis.

(4) The nonprofit corporation shall give notice, in accordance with section 7-127-104, to each member entitled to vote on the amendment of the members' meeting at which the amendment will be voted upon. The notice of the meeting shall state that the purpose, or one of the purposes, of the meeting is to consider the amendment, and the notice shall contain or be accompanied by a copy or a summary of the amendment or shall state the general nature of the amendment.

(5) Unless articles 121 to 137 of this title, the articles of incorporation, bylaws adopted by the members, or the proposing board of directors or the proposing members acting pursuant to subsection (3) of this section require a greater vote, the amendment shall be approved by the votes required by sections 7-127-205 and 7-127-206 by every voting group entitled to vote on the amendment.

(6) If the board of directors or the members seek to have the amendment approved by the members by written consent, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

7-130-104. Voting on amendments of articles of incorporation by voting groups. (1) Unless otherwise provided by articles 121 to 137 of this title or the articles of incorporation, if membership voting is otherwise required by articles 121 to 137 of this title, the members of a class who are entitled to vote are entitled to vote as a separate voting group on an amendment to the articles of incorporation if the amendment would:

(a) Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than such amendment would affect another class;

(b) Change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class;

(c) Increase or decrease the number of memberships authorized for that class;

(d) Increase the number of memberships authorized for another class;

(e) Effect an exchange, reclassification, or termination of the memberships of that class; or

(f) Authorize a new class of memberships.

(2) If a class is to be divided into two or more classes as a result of an amendment to the articles of incorporation, the amendment shall be approved by the members of each class that would be created by the amendment.

7-130-105. Articles of amendment to articles of incorporation. (1) A nonprofit corporation amending its articles of incorporation shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of amendment ~~setting forth~~ *stating*:

(a) The *domestic entity* name of the nonprofit corporation;

(b) The text of each amendment adopted;

(c) The date of each amendment's adoption;

(d) If the amendment was adopted by the board of directors or incorporators without member action, a statement to that effect and that member action was not required;

(e) If the amendment was adopted by the members, a statement that the number of votes cast for the amendment by each voting group entitled to vote separately on the amendment was sufficient for approval by that voting group; and

(f) If approval of the amendment by some person or persons other than the members, the board of directors, or the incorporators is required pursuant to section 7-130-301, a statement that the approval was obtained.

7-130-106. Restated articles of incorporation. (1) The board of directors may restate the articles of incorporation at any time with or without member action. If the nonprofit corporation has no members and no directors have been elected, its incorporators may restate the articles of incorporation at any time.

(2) The restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment requiring member approval, it shall be adopted as provided in section 7-130-103.

(3) If the board of directors submits a restatement for member action, the nonprofit corporation shall give notice, in accordance with section 7-127-104, to each member entitled to vote on the restatement of the members' meeting at which the restatement will be voted upon. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the restatement, and the notice shall contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles of incorporation.

(4) A nonprofit corporation restating its articles of incorporation shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of restatement ~~setting forth~~ *stating*:

(a) The *domestic entity* name of the nonprofit corporation;

(b) The text of the restated articles of incorporation;

(c) If the restatement contains an amendment to the articles of incorporation that was adopted by the members, the information required by section 7-130-105 (1) (e); and

(d) If the restatement was adopted by the board of directors or incorporators without member action, a statement to that effect and that member action was not required.

(5) Upon filing by the secretary of state or at any later effective date determined pursuant to section 7-90-304, restated articles of incorporation supersede the original articles of incorporation and all prior amendments to them.

7-130-107. Amendment of articles of incorporation pursuant to reorganization. (1) Articles of incorporation may be amended, without action by the board of directors or members, to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under a statute of this state or of the United States if the articles of incorporation after amendment contain only provisions required or permitted by section 7-122-102.

(2) For an amendment to the articles of incorporation to be made pursuant to subsection (1) of this section, an individual or individuals designated by the court shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of amendment ~~setting forth~~ *stating*:

(a) The *domestic entity* name of the nonprofit corporation;

(b) The text of each amendment approved by the court;

(c) The date of the court's order or decree approving the articles of amendment;

(d) The title of the reorganization proceeding in which the order or decree was entered; and

(e) A statement that the court had jurisdiction of the proceeding under a specified statute of this state or of the United States.

(3) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

7-130-108. Effect of amendment of articles of incorporation. An amendment to the articles of incorporation does not affect any existing right of persons other than members, any cause of action existing against or in favor of the nonprofit corporation, or any proceeding to which the nonprofit corporation is a party. An amendment changing a nonprofit corporation's *domestic* entity name does not abate a proceeding brought by or against a nonprofit corporation in its former entity name.

PART 2 AMENDMENT OF BYLAWS

7-130-201. Amendment of bylaws by board of directors or members. (1) The board of directors may amend the bylaws at any time to add, change, or delete a provision, unless:

- (a) Articles 121 to 137 of this title or the articles of incorporation reserve such power exclusively to the members in whole or part; or
- (b) A particular bylaw expressly prohibits the board of directors from doing so; or
- (c) It would result in a change of the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.

(2) The members may amend the bylaws even though the bylaws may also be amended by the board of directors. In such instance, the action shall be taken in accordance with sections 7-130-103 and 7-130-104 as if each reference therein to the article of incorporation was a reference to the bylaws.

7-130-202. Bylaw changing quorum or voting requirement for members.

(1) (Deleted by amendment, L. 98, p. 626, § 36, effective July 1, 1998.)

(2) A bylaw that fixes a lesser or greater quorum requirement or a greater voting requirement for members pursuant to section 7-127-207 shall not be amended by the board of directors.

7-130-203. Bylaw changing quorum or voting requirement for directors. (1) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended:

- (a) If adopted by the members, only by the members; or
- (b) If adopted by the board of directors, either by the members or by the board of directors.

(2) A bylaw adopted or amended by the members that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended only by a **specified stated** vote of either the members or the board of directors.

(3) Action by the board of directors under paragraph (b) of subsection (1) of this section to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

PART 3 APPROVAL BY THIRD PERSONS AND

TERMINATING MEMBERS OR REDEEMING OR
CANCELING MEMBERSHIPS

7-130-301. Approval by third persons. The articles of incorporation may require an amendment to the articles of incorporation or bylaws to be approved in writing by a **specified stated** person or persons other than the board of directors. Such a provision may only be amended with the approval in writing of such person or persons.

7-130-302. Amendment terminating members or redeeming or canceling memberships. (1) Any amendment to the articles of incorporation or bylaws of a nonprofit corporation that would terminate all members or any class of members or redeem or cancel all memberships or any class of memberships shall meet the requirements of articles 121 to 137 of this title and this section.

(2) Before adopting a resolution proposing an amendment as described in subsection (1) of this section, the board of directors of a nonprofit corporation shall give notice of the general nature of the amendment to the members.

ARTICLE 131

Merger

7-131-101. Merger. (1) One or more nonprofit corporations may merge into another nonprofit corporation if the board of directors of each nonprofit corporation adopts a plan of merger and the members entitled to vote thereon, if any, of the nonprofit corporation, if required by section 7-131-102, approve the plan of merger.

(2) The plan of merger required by subsection (1) of this section shall **set forth state**:

(a) The *domestic entity* name of each nonprofit corporation planning to merge and the *domestic entity* name of the surviving nonprofit corporation into which each nonprofit corporation plans to merge;

(b) The terms and conditions of the merger, *including the manner and basis of converting the memberships of each nonprofit corporation, if any, into memberships, obligations, or other interests of the surviving nonprofit corporation or any other entity or into money or other property in whole or in part; and*

<p>312. <i>Reason for change:</i> This combining of what was previously two subsections, (b) and (c), eliminates the need to distinguish between "terms and conditions" and "manner and basis for converting" memberships.</p>
--

(c) ~~The manner and basis of converting the memberships of each nonprofit corporation, if any, into memberships, obligations, or other interests of the surviving nonprofit corporation or any other entity or into money or other property in whole or part; and~~

(d) Any amendments to the articles of incorporation of the surviving nonprofit corporation to be effected by the merger.

(3) The plan of merger may **set forth state** other provisions relating to the merger.

7-131-102. Action on plan of merger. (1) After adopting the plan of merger, the board of directors of each nonprofit corporation that is a party to the merger shall also submit the plan of merger to its members, if any are entitled to vote thereon, for approval.

(2) If the nonprofit corporation does have members entitled to vote with respect to the approval of a plan of merger, a plan of merger is approved by the members if:

(a) The board of directors recommends the plan of merger to the members entitled to vote thereon unless the board of directors determines that, because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the members with the plan; and

(b) The members entitled to vote on the plan of merger approve the plan as provided in subsection (7) of this section.

(3) After adopting the plan of merger, the board of directors of each nonprofit corporation party to the merger shall submit the plan of merger for written approval by any person or persons whose approval is required by a provision of the articles of incorporation of the nonprofit corporation and as recognized by section 7-130-301 for an amendment to the articles of incorporation or bylaws.

(4) If the nonprofit corporation does not have members entitled to vote on a merger, the merger shall be approved and adopted by a majority of the directors elected and in office at the time the plan of merger is considered by the board of directors. In addition, the nonprofit corporation shall provide notice of any meeting of the board of directors at which such approval is to be obtained in accordance with section 7-128-203. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.

(5) The board of directors may condition the effectiveness of the plan of merger on any basis.

(6) The nonprofit corporation shall give notice, in accordance with section 7-127-104, to each member entitled to vote on the plan of merger of the members' meeting at which the plan will be voted on. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger, and the notice shall contain or be accompanied by a copy of the plan or a summary thereof.

(7) Unless articles 121 to 137 of this title, the articles of incorporation, bylaws adopted by the members, or the board of directors acting pursuant to subsection (5) of this section require a greater vote, the plan of merger shall be approved by the votes required by sections 7-127-205 and 7-127-206 by every voting group entitled to vote on the plan of merger.

(8) Separate voting by voting groups is required on a plan of merger if the plan contains a provision that, if contained in an amendment to the articles of incorporation, would require action by one or more separate voting groups on the amendment.

7-131-103. Articles of merger. (1) After a plan of merger is approved, pursuant to section 7-131-102, the surviving nonprofit corporation shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of merger **setting forth stating**:

(a) The ~~plan of merger~~ *domestic entity name of each merging nonprofit corporation and the principal office address of its principal office*;

(a.3) The domestic entity name of the surviving nonprofit corporation and the principal address of its principal office;

313. <i>Note re Change in 2004:</i> The phrase should be "the principal <i>office</i> address of its principal office."

(a.5) A statement that the merging entities are merged into the surviving entity and the section of this article pursuant to which the merger is effected;

(b) If member approval was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors of the nonprofit corporation;

(c) If approval of the members of one or more nonprofit corporations party to the merger was required, a statement that the number of votes cast for the plan by each voting group entitled to vote separately on the merger was sufficient for approval by that voting group;

(d) If approval of the plan by some person or persons other than the members or the board of directors is required pursuant to section 7-131-102 (3), a statement that such approval was obtained.

(2) (Deleted by amendment, L. 2002, p.1856, § 144, effective July 1, 2002; p. 1721, § 146, effective October 1, 2002.)

(3) Articles of merger shall be approved by each party to the merger.

7-131-104. Effect of merger. (1) When a merger takes effect:

(a) Every other nonprofit corporation party to the merger merges into the surviving nonprofit corporation and the separate existence of every nonprofit corporation party to the merger except the surviving nonprofit corporation ceases;

(b) The title to all real estate and other property owned by each other nonprofit corporation party to the merger is transferred to and vested in the surviving nonprofit corporation without reversion or impairment; and such transfer to and vesting in the surviving nonprofit corporation shall be deemed to occur by operation of law, and no consent or approval of any other person shall be required in connection with any such transfer or vesting unless such consent or approval is specifically required in the event of merger by law or by express provision in any contract, agreement, decree, order, or other instrument to which any of the nonprofit corporations so merged is a party or by which it is bound;

(c) The surviving nonprofit corporation has all liabilities of each nonprofit corporation party to the merger;

(d) A proceeding pending by or against any nonprofit corporation party to the merger may be continued as if the merger did not occur or the surviving nonprofit corporation may be substituted in the proceeding for the nonprofit corporation whose existence ceased;

(e) The articles of incorporation of the surviving nonprofit corporation are amended to the extent provided in the plan of merger; and

(f) The memberships of each nonprofit corporation party to the merger that are to be converted into memberships, obligations, or other interests of the surviving nonprofit corporation or into money or other

property are converted, and the former holders of the memberships are entitled only to the rights provided in the articles of merger.

7-131-105. Merger with foreign nonprofit corporation. (1) One or more domestic nonprofit corporations may merge with one or more foreign nonprofit corporations if:

(a) The merger is permitted by the law of the ~~state or country~~ *jurisdiction* under ~~whose the~~ *law of which* each foreign nonprofit corporation is incorporated;

(b) Each foreign nonprofit corporation complies with the provisions of such law in effecting the merger;

(c) The foreign nonprofit corporation complies with section 7-131-103, if it is the surviving nonprofit corporation of the merger and provides, in addition to the information required by such section, the address of its principal office; and

(d) Each domestic nonprofit corporation complies with the applicable provisions of sections 7-131-101 and 7-131-102 and, if it is the surviving nonprofit corporation of the merger, with section 7-131-103.

(2) Upon the merger taking effect, the surviving foreign nonprofit corporation of a merger:

(a) Shall either:

(I) Maintain a registered agent *pursuant to part 7 of article 90 of this title, whether or not the foreign nonprofit corporation is otherwise subject to that part*, to accept service in any proceeding based on a cause of action arising with respect to any domestic nonprofit corporation that is merged into the foreign nonprofit corporation; or

(II) Be deemed to have authorized service of process on it in connection with any such proceeding by registered or certified mail, return receipt requested, to the address of its principal office as ~~set forth stated~~ in the articles of merger or as last changed ~~in a notice delivered to the secretary of state a statement of change filed by the secretary of state~~;

(b) Shall comply with ~~article 135 part 8 of article 90~~ of this title if it is to conduct ~~affairs activities~~ in this state.

(3) Service effected pursuant to subparagraph (II) of paragraph (a) of subsection (2) of this section is perfected at the earliest of:

(a) The date the foreign nonprofit corporation receives the process, notice, or demand;

(b) The date shown on the return receipt, if signed on behalf of the foreign nonprofit corporation;
or

(c) Five days after mailing.

(4) Subsection (2) of this section does not prescribe the only means, or necessarily the required means, of serving a surviving foreign nonprofit corporation of a merger.

ARTICLE 132

Sale of Property

7-132-101. Sale of property. (1) Unless the bylaws otherwise provide, a nonprofit corporation may, as authorized by the board of directors:

(a) Sell, lease, exchange, or otherwise dispose of all or substantially all of its property in the usual and regular course of business;

(b) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber all or substantially all of its property whether or not in the usual and regular course of business.

(2) Unless otherwise provided in the bylaws, approval by the members of a transaction described in this section is not required.

7-132-102. Sale of property other than in regular course of activities. (1) A nonprofit corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without its good will, other than in the usual and regular course of business on the terms and conditions and for the consideration determined by the board of directors, if the board of directors proposes and the members entitled to vote thereon approve the transaction. A sale, lease, exchange, or other disposition of all, or substantially all, of the property of a nonprofit corporation, with or without its good will, in connection with its dissolution, other than in the usual and regular course of business, and other than pursuant to a court order, shall be subject to the requirements of this section; but a sale, lease, exchange, or other disposition of all, or substantially all, of the property of a nonprofit corporation, with or without its good will, pursuant to a court order shall not be subject to the requirements of this section.

(2) If a nonprofit corporation is entitled to vote or otherwise consent, other than in the usual and regular course of its business, with respect to the sale, lease, exchange, or other disposition of all, or substantially all, of the property with or without the good will of another entity which it controls, and if the property interests held by the nonprofit corporation in such other entity constitute all, or substantially all, of the property of the nonprofit corporation, then the nonprofit corporation shall consent to such transaction only if the board of directors proposes and the members, if any are entitled to vote thereon, approve the giving of consent.

(3) For a transaction described in subsection (1) of this section or a consent described in subsection (2) of this section to be approved by the members:

(a) The board of directors shall recommend the transaction or the consent to the members unless the board of directors determines that, because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the members at a membership meeting with the submission of the transaction or consent; and

(b) The members entitled to vote on the transaction or the consent shall approve the transaction or the consent as provided in subsection (6) of this section.

(4) The board of directors may condition the effectiveness of the transaction or the consent on any basis.

(5) The nonprofit corporation shall give notice, in accordance with section 7-127-104 to each member entitled to vote on the transaction described in subsection (1) of this section or the consent described in subsection (2) of this section, of the members' meeting at which the transaction or the consent will be voted upon. The notice shall:

(a) State that the purpose, or one of the purposes, of the meeting is to consider:

(I) In the case of action pursuant to subsection (1) of this section, the sale, lease, exchange, or other disposition of all, or substantially all, of the property of the nonprofit corporation; or

(II) In the case of action pursuant to subsection (2) of this section, the nonprofit corporation's consent to the sale, lease, exchange, or other disposition of all, or substantially all, of the property of another entity, which entity shall be identified in the notice, property interests of which are held by the nonprofit corporation and constitute all, or substantially all, of the property of the nonprofit corporation; and

(b) Contain or be accompanied by a description of the transaction, in the case of action pursuant to subsection (1) of this section, or by a description of the transaction underlying the consent, in the case of action pursuant to subsection (2) of this section.

(6) Unless articles 121 to 137 of this title, the articles of incorporation, bylaws adopted by the members, or the board of directors acting pursuant to subsection (4) of this section require a greater vote, the transaction described in subsection (1) of this section or the consent described in subsection (2) of this section shall be approved by the votes required by sections 7-127-205 and 7-127-206 by every voting group entitled to vote on the transaction or the consent.

(7) After a transaction described in subsection (1) of this section or a consent described in subsection (2) of this section is authorized, the transaction may be abandoned or the consent withheld or revoked, subject to any contractual rights or other limitations on such abandonment, withholding, or revocation, without further action by the members.

(8) A transaction that constitutes a distribution is governed by article 133 and not by this section.

ARTICLE 133

Distributions

7-133-101. Distributions prohibited. Except as authorized by section 7-133-102, a nonprofit corporation shall not make any distributions.

7-133-102. Authorized distributions. (1) A nonprofit corporation may:

(a) Make distributions of its income or assets to its members that are domestic or foreign nonprofit corporations;

(b) Pay compensation in a reasonable amount to its members, directors, or officers for services rendered; and

(c) Confer benefits upon its members in conformity with its purposes.

(2) Nonprofit corporations may make distributions upon dissolution in conformity with article 134 of this title.

ARTICLE 134

Dissolution

PART 1

VOLUNTARY DISSOLUTION

7-134-101. Dissolution by incorporators or directors if no members. (1) If a nonprofit corporation has no members, a majority of its directors or, if there are no directors, a majority of its incorporators may authorize the dissolution of the nonprofit corporation.

(2) The incorporators or directors in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the nonprofit corporation will be distributed after all creditors have been paid.

7-134-102. Dissolution by directors and members. (1) Unless otherwise provided in the bylaws, dissolution of a nonprofit corporation may be authorized in the manner provided in subsection (2) of this section.

(2) For a proposal to dissolve the nonprofit corporation to be authorized:

(a) The board of directors shall adopt the proposal to dissolve;

(b) The board of directors shall recommend the proposal to dissolve to the members unless the board of directors determines that, because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the members; and

(c) The members entitled to vote on the proposal to dissolve shall approve the proposal to dissolve as provided in subsection (5) of this section.

(3) The board of directors may condition the effectiveness of the dissolution, and the members may condition their approval of the dissolution, on any basis.

(4) The nonprofit corporation shall give notice, in accordance with section 7-127-104, to each member entitled to vote on the proposal of the members' meeting at which the proposal to dissolve will be voted on. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the proposal to dissolve the nonprofit corporation, and the notice shall contain or be accompanied by a copy of the proposal or a summary thereof.

(5) Unless articles 121 to 137 of this title, the articles of incorporation, bylaws adopted by the members, or the board of directors acting pursuant to subsection (3) of this section require a greater vote, the proposal to dissolve shall be approved by the votes required by sections 7-127-205 and 7-127-206 by every voting group entitled to vote on the proposal to dissolve.

(6) The plan of dissolution shall indicate to whom the assets owned or held by the nonprofit corporation will be distributed after all creditors have been paid.

7-134-103. Articles of dissolution. (1) At any time after dissolution is authorized, the nonprofit corporation may dissolve by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of dissolution ~~setting forth~~ *stating*:

(a) The *domestic entity* name of the nonprofit corporation;

(b) The *principal office* address of the nonprofit corporation's principal office; ~~or, if none is to be maintained, a statement that the nonprofit corporation will not maintain a principal office, and, if different from the address of the principal office or if no principal office is to be maintained, the address to which service of process may be mailed pursuant to section 7-134-109;~~

314. *Reason for change:* Part 7 of Article 90, requiring domestic nonprofit corporations and certain other entities to maintain registered agents, continues to apply to domestic corporations after their dissolution. If the dissolved nonprofit corporation does not maintain a registered agent in accordance with that part, § 7-90-704(2) provides that it may be served with process by mail to its principal office address; accordingly, this subsection (b) now contemplates that the dissolved nonprofit corporation will in all cases maintain a principal office. If the dissolved nonprofit corporation wishes, of course, that office may be nothing more than a place at which service by mail pursuant to § 7-90-704(2) can be received.

(c) The date dissolution was authorized;

(d) If dissolution was authorized by the directors or the incorporators pursuant to section 7-134-101, a statement to that effect;

(e) If dissolution was approved by the members pursuant to section 7-134-102, a statement that the number of votes cast for the proposal to dissolve by each voting group entitled to vote separately on the proposal was sufficient for approval by that voting group; and

(f) Such additional information as the secretary of state determines is necessary or appropriate.

(2) A nonprofit corporation is dissolved upon the effective date of its articles of dissolution.

(3) Articles of dissolution need not be filed by a nonprofit corporation that is dissolved pursuant to section 7-134-401.

7-134-104. Revocation of dissolution. (1) A nonprofit corporation may revoke its dissolution within one hundred twenty days after the effective date of the dissolution.

(2) Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless, in case of authorization pursuant to section 7-134-102, that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without member action.

(3) After the revocation of dissolution is authorized, the nonprofit corporation may revoke the dissolution by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, within one hundred twenty days after the effective date of dissolution, articles of revocation of dissolution, together with a copy of its articles of dissolution, that ~~set forth~~ **state**:

(a) The *domestic* entity name of the nonprofit corporation;

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

(c) The date that the revocation of dissolution was authorized;

(d) If, pursuant to subsection (2) of this section, the directors or the incorporators revoked a dissolution authorized under section 7-134-101, a statement that the revocation of dissolution was authorized by the directors or the incorporators, as the case may be;

(e) If, pursuant to subsection (2) of this section, the directors revoked a dissolution approved by the members, a statement that the revocation was permitted by action of the directors pursuant to that approval; and

(f) If the revocation of dissolution was approved pursuant to subsection (2) of this section by the members, a statement that the number of votes cast for revocation of dissolution by each voting group entitled to vote separately on the proposal to dissolve was sufficient for approval by that voting group.

(4) Revocation of dissolution is effective as provided in section 7-90-304, and no delayed effective date may be **specified stated** pursuant to section 7-90-304.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution, and the nonprofit corporation may carry on its activities and use its **domestic** entity name as if dissolution had never occurred.

7-134-105. Effect of dissolution. (1) A dissolved nonprofit corporation continues its corporate existence but may not carry on any activities except as is appropriate to wind up and liquidate its affairs, including:

(a) Collecting its assets;

(b) Returning, transferring, or conveying assets held by the nonprofit corporation upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition;

(c) Transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;

(d) Discharging or making provision for discharging its liabilities;

(e) Doing every other act necessary to wind up and liquidate its assets and affairs.

(2) Upon dissolution of a nonprofit corporation exempt under section 501 (c) (3) of the internal revenue code, or corresponding section of any future federal tax code, the assets of such nonprofit corporation shall be distributed for one or more exempt purposes under said section, or to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by the district court for the county *in this state* in which the *street address of the nonprofit corporation's* principal office ~~of such nonprofit corporation~~ is then located, *or, if the nonprofit corporation has no principal office in this state, by the district court of the county in which the street address of its registered agent is located, or, if then nonprofit corporation has not registered agent, the district court of the city and county of Denver* exclusively for such purposes or to such organization or organizations, as said court shall determine, ~~which that~~ are **organized formed** and operated exclusively for such purposes.

(3) Dissolution of a nonprofit corporation does not:

(a) Transfer title to the nonprofit corporation's property;

(b) Subject its directors or officers to standards of conduct different from those prescribed in article 128 of this title;

(c) Change quorum or voting requirements for its board of directors or members, change provisions for selection, resignation, or removal of its directors or officers, or both, or change provisions for amending its bylaws or its articles of incorporation;

(d) Prevent commencement of a proceeding by or against the nonprofit corporation in its entity name; or

(e) Abate or suspend a proceeding pending by or against the nonprofit corporation on the effective date of dissolution.

~~(4) On and after the effective date of the dissolution, the entity name of a dissolved nonprofit corporation shall include the words "a dissolved Colorado nonprofit corporation" and the year of dissolution.~~

315. <i>Reason for change:</i> Generic provisions for domestic entity names of dissolved domestic entities has are now found in § 7-90-601.5
--

7-134-106. Disposition of known claims by notification.(1) A dissolved nonprofit corporation shall dispose of the known claims against it by following the procedures described in this section.

(2) A dissolved nonprofit corporation shall give written notice of the dissolution to known claimants within ninety days after the effective date of the dissolution. The notice shall:

(a) Describe the information that shall be included in a claim;

(b) Provide an address to which written notice of any claim shall be given to the nonprofit corporation; and

(c) State that, unless sooner barred by any other statute limiting actions, the claim will be barred if an action to enforce the claim is not commenced by a deadline that is stated on the notice, which deadline shall not be less than two years after the giving of notice.

(3) Unless sooner barred by any other statute limiting actions, a claim against the dissolved nonprofit corporation is barred if a claimant received the notice of dissolution given pursuant to subsection (2) of this section and an action to enforce the claim is not commenced by the deadline stated in the notice of dissolution.

(4) The failure of the dissolved nonprofit corporation to give notice to any known claimant pursuant to subsection (2) of this section shall not affect the disposition under this section of any claim held by any other known claimant.

(5) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution. For purposes of this section, an action to enforce

a claim includes an arbitration under any agreement for binding arbitration between the dissolved nonprofit corporation and the claimant and includes a civil action.

7-134-107. Disposition of claims by publication. (1) A dissolved nonprofit corporation may publish notice of its dissolution and request that persons with claims against the nonprofit corporation present them in accordance with the notice.

(2) The notice contemplated in subsection (1) of this section shall:

(a) Be published one time in a newspaper of general circulation in the county ~~where in which the street address of~~ the dissolved nonprofit corporation's principal office *is or was last located* or, if ~~it has no the dissolved nonprofit corporation has not had a~~ principal office in this state, ~~where in the county in which the state address of~~ its registered ~~office agent~~ *is or was last located*;

(b) Describe the information that shall be included in a claim and provide an address at which any claim shall be given to the nonprofit corporation; and

(c) State that, unless sooner barred by any other statute limiting actions, the claim will be barred if an action to enforce the claim is not commenced within five years after the publication of the notice or within four months after the claim arises, whichever is later.

(3) If the dissolved nonprofit corporation publishes a notice in accordance with subsection (2) of this section, then, unless sooner barred under section 7-134-106 or under any other statute limiting actions, the claim of any claimant against the dissolved nonprofit corporation is barred unless the claimant commences an action to enforce the claim within five years after the publication date of the notice or within four months after the claim arises, whichever is later.

(4) For purposes of this section and except where required to be disposed of under section 7-134-106, "claim" means any claim, excluding claims of this state, whether known, due, or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, or otherwise. For purposes of this section, an action to enforce a claim includes an arbitration under any agreement for binding arbitration between the dissolved nonprofit corporation and the claimant and includes a civil action.

7-134-108. Enforcement of claims against dissolved nonprofit corporation. (1) A claim may be enforced under section 7-134-106 or 7-134-107:

(a) Against the dissolved nonprofit corporation to the extent of its undistributed assets; and

(b) If assets have been distributed in liquidation, against any person, other than a creditor of the nonprofit corporation, to whom the nonprofit corporation distributed its property; except that a distributee's total liability for all claims under this section may not exceed the total value of assets distributed to the distributees, as such value is determined at the time of distribution. Any distributees required to return any portion of the value of assets received by the distributees in liquidation shall be entitled to contribution from all other distributees. Each such contribution shall be in accordance with the contributing distributee's rights and interests and shall not exceed the value of the assets received by the contributing distributees in liquidation.

~~**7-134-109. Service on dissolved nonprofit corporation. (1) A dissolved nonprofit corporation shall either:**~~

- ~~—— (a) Maintain a registered agent to accept service of process on its behalf; or~~
- ~~—— (b) Be deemed to have authorized service of process on it by registered or certified mail, return receipt requested, to the address of its principal office, if any, as set forth in its articles of dissolution or as last changed by notice delivered to the secretary of state for filing or to the address for service of process that is stated in its articles of dissolution or as last changed by notice delivered to the secretary of state for filing.~~
- ~~—— (2) Service effected pursuant to paragraph (b) of subsection (1) of this section is perfected at the earliest of:~~
- ~~—— (a) The date the dissolved nonprofit corporation receives the process, notice, or demand;~~
- ~~—— (b) The date shown on the return receipt, if signed on behalf of the dissolved nonprofit corporation; or~~
- ~~—— (c) Five days after mailing.~~
- ~~—— (3) Subsection (1) of this section does not prescribe the only means, or necessarily the required means, of serving a dissolved nonprofit corporation.~~

316. *Reason for change:* The deleted service provisions applied to cooperatives that were administratively or judicially dissolved, as well as to those that were voluntarily dissolved.

Generic provisions for registered agents and service of process, including for dissolved entities, are now provided in new Subpart 4 of this Part 7.

PART 2 ADMINISTRATIVE DISSOLUTION

7-134-201. Grounds for administrative dissolution. (1) The secretary of state may commence a proceeding under section 7-134-202 for administrative dissolution of a nonprofit corporation if:

- (a) The nonprofit corporation does not pay any taxes, fees, or penalties imposed by this title when they are due;
- (b) The nonprofit corporation does not ~~deliver its periodic report to the secretary of state when it is due~~ *comply with part 5 of article 90 of this title, providing for reports from reporting entities;*
- (c) The nonprofit corporation is ~~without a registered agent or registered office not in compliance with part 7 of article 90 of this title, providing for registered agents and service of process;~~ *or*
- (d) ~~The nonprofit corporation does not give notice to the secretary of state that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or~~

(e) The nonprofit corporation's period of duration stated in its articles of incorporation expires.

7-134-202. Procedure for and effect of administrative dissolution. (1) If the secretary of state determines that one or more grounds exist under section 7-134-201 for dissolving a nonprofit corporation, the secretary of state shall mail written notice of the determination, stating such ground or grounds, to the nonprofit corporation.

(2) If the nonprofit corporation does not correct each ground for dissolution, or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist, within sixty days after mailing of the notice contemplated in subsection (1) of this section, the secretary of state may administratively dissolve the nonprofit corporation. The secretary of state shall mail written notice of the administrative dissolution, stating the effective date thereof, to the *principal office address of the dissolved nonprofit corporation's principal office* and shall mail a copy of such notice to the ~~last~~ registered agent *address of the dissolved nonprofit corporation's last registered agent*.

(3) A nonprofit corporation administratively dissolved continues its corporate existence but may not carry on any activities except as is appropriate to wind up and liquidate its affairs under section 7-134-105 and to give notice to claimants in the manner provided in sections 7-134-106 and 7-134-107. ~~If the nonprofit corporation has not been reinstated pursuant to section 7-134-203 within one hundred twenty days after the effective date of the administrative dissolution under subsection (2) of this section, the entity name shall include the words "a dissolved Colorado nonprofit corporation" and the year of dissolution.~~

317. *Reason for change:* Generic provisions for domestic entity names of dissolved domestic entities has are now found in § 7-90-601.5

(4) ~~The administrative dissolution of a nonprofit corporation terminates the authority of its registered agent.~~

318. *Reason for Change:* There is no logical reason to eliminate the authority of a registered agent upon involuntary dissolution. The entity remains a corporate entity, albeit in dissolution, and it may be named as defendant in post-dissolution actions, for which it is appropriate to maintain an agent for service of process, a "registered agent."

This is now explicitly recognized in Part 7 of Article 90, and particularly in § 7-90-105, which continues the requirement that a dissolved entity maintain a registered agent and provides for mailed service if they do not.

(5) ~~Upon the administrative dissolution of a nonprofit corporation, the secretary of state shall be the dissolved nonprofit corporation's agent for service of process. Service of process on the secretary of state under this subsection (5) is service on the dissolved nonprofit corporation. Upon receipt of process, the secretary of state shall deliver a copy of the process to the dissolved nonprofit corporation at its principal office.~~

319. *Reason for change:* Generic provision is made in part 7 of article 90 of this title for service of process on entities that do not have registered agents. Section 7-90-705 specifies that those provisions are applicable to dissolved entities.

~~7-134-203. Reinstatement following administrative dissolution. (1) A nonprofit corporation administratively dissolved under section 7-134-202 may apply to the secretary of state for reinstatement within five years after the effective date of dissolution by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, an application for reinstatement that states:~~

~~(a) The effective date of its administrative dissolution and its entity name on such date;~~

~~(b) That the ground or grounds for dissolution either did not exist or have been eliminated;~~

~~(c) The entity name under which the nonprofit corporation is being reinstated and that such name satisfies the requirements of part 6 of article 90 of this title;~~

~~(d) That all taxes, fees, or penalties imposed by this title have been paid;~~

~~(e) The address of its registered office and the name of its registered agent at that office; and~~

~~(f) Such additional information as the secretary of state determines is necessary or appropriate.~~

~~(2) (Deleted by amendment, L. 2002, p. 1857, § 147, effective July 1, 2002; p. 1722, § 149, effective October 1, 2002.)~~

~~(3) If the secretary of state determines that the application for reinstatement contains the information required by subsection (1) of this section and that the information is correct, the secretary of state shall revoke the administrative dissolution. The secretary of state shall mail written notice of the revocation, stating the effective date thereof, to the nonprofit corporation.~~

~~(4) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution. The nonprofit corporation may carry on its activities, under the name stated pursuant to paragraph (c) of subsection (1) of this section, as if the administrative dissolution had never occurred.~~

~~7-134-204. Appeal from denial of reinstatement. (1) If the secretary of state denies a nonprofit corporation's application for reinstatement following administrative dissolution, the secretary of state shall mail written notice setting forth the reason or reasons for such denial:~~

~~(2) The nonprofit corporation may appeal the denial of reinstatement to the district court of the county in this state where the nonprofit corporation's principal office is located or, if the nonprofit corporation has no principal office in this state, to the district court of the county in which its registered office is located or, if the nonprofit corporation has no registered office, to the district court for the city and county of Denver, within thirty days after mailing of the notice of denial, by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's notice of dissolution, the nonprofit corporation's application for reinstatement, and the secretary of state's notice of denial.~~

~~(3) The court may summarily order the secretary of state to reinstate the dissolved nonprofit corporation or may take any other action the court considers appropriate.~~

~~(4) The court's order or decision may be appealed as in other civil proceedings.~~

7-134-205. Continuation as unincorporated association. A nonprofit corporation that is administratively dissolved, continues to operate for nonprofit purposes, and does not wind up its business and affairs shall be deemed an unincorporated organization as provided in section 7-30-101.1 that qualifies as a nonprofit association for purposes of the "Uniform Unincorporated Nonprofit Association Act", article 30 of this title, unless it reinstates itself as provided in ~~sections 7-134-203 and 7-134-204~~ *part 10 of article 90 of this title.*

PART 3 JUDICIAL DISSOLUTION

7-134-301. Grounds for judicial dissolution. (1) A nonprofit corporation may be dissolved in a proceeding by the attorney general if it is established that:

- (a) The nonprofit corporation obtained its articles of incorporation through fraud; or
- (b) The nonprofit corporation has continued to exceed or abuse the authority conferred upon it by law.

(2) A nonprofit corporation may be dissolved in a proceeding by a director or member if it is established that:

- (a) The directors are deadlocked in the management of the corporate affairs, the members, if any, are unable to break the deadlock, and irreparable injury to the nonprofit corporation is threatened or being suffered;
- (b) The directors or those otherwise in control of the nonprofit corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
- (c) The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or
- (d) The corporate assets are being misapplied or wasted.

(3) A nonprofit corporation may be dissolved in a proceeding by a creditor if it is established that:

- (a) The creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied, and the nonprofit corporation is insolvent; or
- (b) The nonprofit corporation is insolvent and the nonprofit corporation has admitted in writing that the creditor's claim is due and owing.

(4) (a) If a nonprofit corporation has been dissolved by voluntary or administrative action taken under part 1 or 2 of this article:

- (I) The nonprofit corporation may bring a proceeding to wind up and liquidate its business and affairs under judicial supervision in accordance with section 7-134-105; and

(II) The attorney general, a director, a member, or a creditor may bring a proceeding to wind up and liquidate the affairs of the nonprofit corporation under judicial supervision in accordance with section 7-134-105, upon establishing the grounds set forth in subsections (1) to (3) of this section.

(b) As used in sections 7-134-302 to 7-134-304, a "judicial proceeding to dissolve the nonprofit corporation" includes a proceeding brought under this subsection (4), and a "decree of dissolution" includes an order of court entered in a proceeding under this subsection (4) that directs that the affairs of a nonprofit corporation shall be wound up and liquidated under judicial supervision.

7-134-302. Procedure for judicial dissolution. (1) A proceeding by the attorney general to dissolve a nonprofit corporation shall be brought in the district court ~~of for~~ the county in this state ~~where in which the street address of~~ the nonprofit corporation's principal office or ~~the street address of its~~ registered ~~office agent~~ is located or, if the nonprofit corporation has no principal ~~or registered~~ office in this state ~~and no registered agent~~, in the district court for the city and county of Denver. A proceeding brought by any other party named in section 7-134-301 shall be brought in the district court ~~of for~~ the county in this state ~~where in which the street address of~~ the nonprofit corporation's principal office is located or, if it has no principal office in this state, in the district court ~~of for~~ the county ~~where in which the street address of~~ its registered ~~office agent~~ is ~~or was last~~ located, ~~or, if the nonprofit corporation has no registered agent, in the district court for the city and county of Denver.~~

(2) It is not necessary to make directors or members parties to a proceeding to dissolve a nonprofit corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a nonprofit corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the nonprofit corporation until a full hearing can be held.

7-134-303. Receivership or custodianship. (1) A court in a judicial proceeding brought to dissolve a nonprofit corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the nonprofit corporation. The court shall hold a hearing, after giving notice to all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the nonprofit corporation and all of its property, wherever located.

(2) The court may appoint an individual, a domestic *entity*, or a foreign ~~corporation entity~~ authorized to transact business ~~or conduct activities~~ in this state, or a domestic or foreign nonprofit corporation authorized to transact business ~~or conduct activities~~ in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount ~~specified stated~~ by the court.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order which may be amended from time to time. Among other powers the receiver shall have the power to:

(a) Dispose of all or any part of the property of the nonprofit corporation, wherever located, at a public or private sale, if authorized by the court; and

(b) Sue and defend in the receiver's own name as receiver of the nonprofit corporation in all courts.

(4) The custodian may exercise all of the powers of the nonprofit corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the nonprofit corporation in the best interests of its members and creditors.

(5) The court, during a receivership, may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver if doing so is in the best interests of the nonprofit corporation and its members and creditors.

(6) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and such person's counsel from the assets of the nonprofit corporation or proceeds from the sale of the assets.

7-134-304. Decree of dissolution. (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in section 7-134-301 exist, it may enter a decree dissolving the nonprofit corporation and ~~specifying~~ **stating** the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state ~~who shall file it accordingly for filing pursuant to part 3 of article 90 of this title.~~

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the nonprofit corporation's affairs in accordance with section 7-134-105 and the giving of notice to the nonprofit corporation's registered agent, or to the secretary of state if it has no registered agent, and to claimants in accordance with sections 7-134-106 and 7-134-107. ~~In the decree of dissolution, or otherwise, the court may direct that the corporate name shall include the words "a dissolved Colorado nonprofit corporation" and the year of dissolution.~~

320. <i>Reason for change:</i> Generic provisions for domestic entity names of dissolved domestic entities has are now found in § 7-90-601.5
--

(3) The court's order or decision may be appealed as in other civil proceedings.

PART 4 DISSOLUTION UPON EXPIRATION OF PERIOD OF DURATION

7-134-401. Dissolution upon expiration of period of duration. (1) A nonprofit corporation shall be dissolved upon and by reason of the expiration of its period of duration, if any, stated in its articles of incorporation.

(2) A provision in the articles of incorporation to the effect that the nonprofit corporation or its existence shall be terminated at a ~~specified~~ **stated** date or after a stated period of time or upon a contingency, or any similar provision, shall be deemed to be a provision for a period of duration within the meaning of this section. The occurrence of such date, the expiration of the stated period of time, the occurrence of such contingency, or the satisfaction of such provision shall be deemed to be the expiration of the nonprofit corporation's period of duration for purposes of this section.

PART 5 MISCELLANEOUS

7-134-501. Deposit with state treasurer. Assets of a dissolved nonprofit corporation that should be transferred to a creditor, claimant, or member of the nonprofit corporation who cannot be found or who is not legally competent to receive them shall be reduced to cash and deposited with the state treasurer as property presumed to be abandoned under the provisions of article 13 of title 38, C.R.S.

ARTICLE 135

Foreign Nonprofit Corporations

PART 1

AUTHORITY TO CONDUCT ~~AFFAIRS~~ ACTIVITIES

7-135-101. Authority to conduct activities required. Part 8 of article 90 of this title, providing for the transaction of business or the conduct of activities by foreign entities, applies to foreign nonprofit corporations.

~~7-135-101. Authority to conduct affairs required. (1) A foreign nonprofit corporation shall not conduct affairs in this state until its application for authority to conduct affairs is filed by the secretary of state. This article shall be applicable to foreign nonprofit corporations that conduct affairs governed by other statutes of this state only to the extent this article is not inconsistent with such other statutes.~~

~~(2) A foreign nonprofit corporation shall not be considered to be conducting affairs in this state within the meaning of subsection (1) of this section by reason of carrying on in this state any one or more of the following activities:~~

~~(a) Maintaining, defending, or settling in its own behalf any proceeding or dispute;~~

~~(b) Holding meetings of its board of directors or members or carrying on other activities concerning internal corporate affairs;~~

~~(c) Maintaining bank accounts;~~

~~(d) Maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities, or maintaining trustees or depositaries with respect to those memberships or securities;~~

~~(e) Selling through independent contractors;~~

~~(f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;~~

~~(g) Creating, as borrower or lender, or acquiring indebtedness, mortgages, or other security interests in real or personal property;~~

~~(h) Securing or collecting debts in its own behalf or enforcing mortgages or security interests in property securing such debts;~~

~~(i) Owning, without more, real or personal property;~~

~~—— (j) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;~~

~~—— (k) Conducting affairs in interstate commerce;~~

~~—— (l) Granting funds;~~

~~—— (m) Distributing information to its members.~~

~~—— (3) The list of activities in subsection (2) of this section is not exhaustive.~~

~~—— (4) Nothing in this section shall limit or affect the right to subject a foreign nonprofit corporation which does not, or is not required to, have authority to conduct affairs in this state to the jurisdiction of the courts of this state or to serve upon any foreign nonprofit corporation any process, notice, or demand required or permitted by law to be served upon a nonprofit corporation pursuant to sections 13-1-124 and 13-1-125, C.R.S., or any other provision of law not in articles 121 to 137 of this title or pursuant to the applicable rules of civil procedure.~~

7-135-102. Consequences of conducting affairs without authority. (1) No foreign nonprofit corporation, or anyone acting on its behalf, conducting affairs in this state without authority shall be permitted to maintain a proceeding in any court in this state until an application for authority to conduct affairs is filed.

~~—— (2) A foreign nonprofit corporation that conducts affairs in this state without authority shall be liable to this state in an amount equal to all fees imposed by articles 121 to 137 of this title or prior law that would have been paid for all years or portions thereof during which it conducted affairs in this state without authority, plus all penalties imposed by this state for failure to pay such fees. No application for authority to conduct affairs shall be filed until payment of the amounts due under this subsection (2) is made.~~

~~—— (3) A foreign nonprofit corporation that conducts affairs in this state without authority shall be subject to a civil penalty, payable to this state, not to exceed five thousand dollars. Each officer of a foreign nonprofit corporation who authorizes, directs, or participates in the conduct of affairs in this state without authority, and each agent of a foreign nonprofit corporation who conducts affairs in this state on behalf of a foreign nonprofit corporation that does not have such authority, shall be subject to a civil penalty payable to this state not to exceed one thousand dollars.~~

~~—— (4) The amounts due to this state under the provisions of this section, including the civil penalties set forth in subsection (3) of this section, may be recovered in an action brought by the attorney general in the district court in and for the city and county of Denver. Upon a finding by the court that a foreign nonprofit corporation or any of its officers or agents has conducted affairs in this state in violation of this article, the court shall issue, in addition to or in lieu of the imposition of a civil penalty, an injunction restraining the further conduct of affairs of the foreign nonprofit corporation and the further exercise of any corporate rights and privileges in this state. The foreign nonprofit corporation shall be enjoined from conducting affairs in this state until all civil penalties plus any interest and court costs which the court may assess have been paid, and until the foreign nonprofit corporation has otherwise complied with the provisions of this article.~~

~~—— (5) Notwithstanding subsection (1) of this section, the failure of a foreign nonprofit corporation to have authority to conduct affairs in this state does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.~~

~~—— 7-135-103. Application for authority to conduct affairs. (1) A foreign nonprofit corporation may apply for authority to conduct affairs in this state by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, an application for authority to conduct affairs setting forth:~~

~~—— (a) Its entity name and its assumed entity name, if any;~~

~~—— (b) The name of the state or country under whose law it is incorporated;~~

~~—— (c) Its date of incorporation and period of duration;~~

~~—— (d) The street address of its principal office;~~

~~—— (e) The address of its registered office and the name of its registered agent at that office;~~

~~—— (f) The names and usual business addresses of its directors and officers;~~

~~—— (g) The date it commenced or expects to commence conducting affairs in this state; and~~

~~—— (h) Such additional information as the secretary of state determines is necessary or appropriate to determine whether the application for authority to conduct affairs should be filed.~~

~~—— (2) The foreign nonprofit corporation shall deliver with the completed application for authority to conduct affairs a certificate of existence, or a document of similar import, duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated. Such certificate shall be dated no later than ninety days before the filing of the application for authority to conduct affairs.~~

~~—— (3) (Deleted by amendment, L. 2002, p. 1857, § 148, effective July 1, 2002; p. 1722, § 150, effective October 1, 2002.)~~

~~—— 7-135-104. Amended application for authority to conduct affairs. (1) A foreign nonprofit corporation authorized to conduct affairs in this state shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, an amended application for authority to conduct affairs if the foreign nonprofit corporation changes:~~

~~—— (a) Its entity name or its assumed entity name;~~

~~—— (b) The period of its duration; or~~

~~—— (c) The state or country of its incorporation.~~

~~—— (2) The requirements of section 7-135-103 for filing an original application for authority to conduct affairs also apply to filing an amended application for authority to conduct affairs under this section.~~

~~7-135-105. Effect of filing an application for authority to conduct affairs. (1) Filing an application for authority to conduct affairs authorizes the foreign nonprofit corporation to conduct affairs in this state, subject to the right of the state to revoke such authority as provided in part 3 of this article.~~

~~(2) A foreign nonprofit corporation which has authority to conduct affairs in this state has the same rights and privileges as, but no greater rights or privileges than, and, except as otherwise provided by articles 121 to 137 of this title, is subject to the same duties, restrictions, penalties, and liabilities now imposed on or later to be imposed on, a domestic nonprofit corporation of like character.~~

~~(3) Articles 121 to 137 of this title do not authorize this state to regulate the organization or internal affairs of a foreign nonprofit corporation authorized to conduct affairs in this state.~~

~~7-135-106. Corporate name and assumed corporate name of foreign nonprofit corporation. (Repealed)~~

~~7-135-107. Registered name of foreign nonprofit corporation. (Repealed)~~

~~7-135-108. Registered office and registered agent of foreign nonprofit corporation. (1) A foreign nonprofit corporation authorized to conduct affairs in this state shall continuously maintain in this state:~~

~~(a) A registered office; and~~

~~(b) A registered agent, who may be:~~

~~(I) An individual who resides in this state and whose business office is identical with the registered office;~~

~~(II) A domestic corporation or domestic nonprofit corporation whose business office is identical with the registered office; or~~

~~(III) A foreign corporation or foreign nonprofit corporation authorized to conduct affairs in this state whose business office is identical with the registered office.~~

~~(2) A foreign nonprofit corporation shall not serve as its own registered agent.~~

~~7-135-109. Changes of registered office or registered agent of foreign nonprofit corporation. (1) A foreign nonprofit corporation authorized to conduct affairs in this state may change its registered office or registered agent by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of change that sets forth:~~

~~(a) Its entity name and its assumed entity name, if any;~~

~~(b) The street address of its current registered office;~~

~~(c) If the registered office is to be changed, the street address of the new registered office;~~

~~—— (d) The name of its current registered agent;~~

~~—— (e) If the registered agent is to be changed, the name of the new registered agent; and~~

~~—— (f) That, after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.~~

~~—— (2) If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any foreign nonprofit corporation for which the registered agent is the registered agent by giving written notice to the foreign nonprofit corporation of the change and executing, either manually or in facsimile, and delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of change that complies with the requirements of subsection (1) of this section and recites that notice of the change has been given to the foreign nonprofit corporation.~~

~~—— 7-135-110. Resignation of registered agent of foreign nonprofit corporation. (1) The registered agent of a foreign nonprofit corporation authorized to conduct affairs in this state may resign from an agency by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of resignation which shall be accompanied by two exact or conformed copies thereof. The statement of resignation may include a statement that the registered office is also discontinued.~~

~~—— (2) (Deleted by amendment, L. 2002, p. 1858, § 151, effective July 1, 2002; p. 1723, § 153, effective October 1, 2002.)~~

~~—— (3) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date that the statement of resignation was filed.~~

~~—— 7-135-111. Service on foreign nonprofit corporation. (1) The registered agent of a foreign nonprofit corporation authorized to conduct affairs in this state is the foreign nonprofit corporation's agent for service of any process, notice, or demand required or permitted by law to be served on the foreign nonprofit corporation.~~

~~—— (2) If a foreign nonprofit corporation authorized to conduct affairs in this state has no registered agent, or the registered agent cannot with reasonable diligence be served, the foreign nonprofit corporation may be served by registered or certified mail, return receipt requested, addressed to the foreign nonprofit corporation at its principal office. Service is perfected under this subsection (2) at the earliest of:~~

~~—— (a) The date the foreign nonprofit corporation receives the process, notice, or demand;~~

~~—— (b) The date shown on the return receipt, if signed on behalf of the foreign nonprofit corporation; or~~

~~—— (c) Five days after mailing.~~

~~—— (3) This section does not prescribe the only means, or necessarily the required means, of serving a foreign nonprofit corporation authorized to conduct affairs in this state.~~

~~7-135-112. Merger of foreign nonprofit corporations authorized to conduct affairs in this state. If two or more foreign nonprofit corporations authorized to conduct affairs in this state are a party to statutory merger permitted by the laws of the state or country under the laws of which they are incorporated, the surviving nonprofit corporation shall, within thirty days after the merger becomes effective, file with the secretary of state a certificate of fact of merger duly certified by the proper officer of the state or country under the laws of which such statutory merger was effected. It shall not be necessary for such nonprofit corporation to procure either a new or amended certificate of authority to conduct affairs in this state unless the name of the surviving nonprofit corporation is changed thereby.~~

~~PART 2 WITHDRAWAL~~

~~7-135-201. Withdrawal of foreign nonprofit corporation. (1) A foreign nonprofit corporation authorized to conduct affairs in this state shall not withdraw from this state until its application for withdrawal has been filed by the secretary of state.~~

~~(2) A foreign nonprofit corporation authorized to conduct affairs in this state shall apply for withdrawal by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, an application for withdrawal setting forth:~~

~~(a) Its entity name and its assumed entity name, if any;~~

~~(b) The address of its principal office or, if none is to be maintained, a statement that the foreign nonprofit corporation will not maintain a principal office, and, if different from the address of the principal office or if no principal office is to be maintained, the address to which service of process may be mailed pursuant to section 7-135-202;~~

~~(c) The name of the state or country under whose law it is incorporated;~~

~~(d) That it is not conducting affairs in this state and that it surrenders its authority to conduct affairs in this state;~~

~~(e) All trade or assumed names used by it pursuant to section 7-71-101, together with a statement that the same are to be canceled; and~~

~~(f) Such additional information as the secretary of state determines is necessary or appropriate to determine whether the foreign nonprofit corporation is entitled to withdraw and to determine and assess any unpaid taxes, fees, and penalties payable by it as prescribed in articles 121 to 137 of this title.~~

~~(3) If a foreign nonprofit corporation delivers to the secretary of state an application for withdrawal before the date on which a periodic report is due, and the application for withdrawal is filed within thirty days after the date of its delivery to the secretary of state, the foreign nonprofit corporation shall be relieved of its obligation to file such periodic report or pay the fee therefor.~~

~~7-135-202. Service on withdrawn foreign nonprofit corporation. (1) A foreign nonprofit corporation that has withdrawn from this state pursuant to section 7-135-201 shall either:~~

~~—— (a) Maintain a registered agent in this state to accept service on its behalf in any proceeding based on a cause of action arising during the time it was authorized to conduct affairs in this state; or~~

~~—— (b) Be deemed to have authorized service of process on it in connection with such causes of action by registered or certified mail, return receipt requested, to the address of its principal office, if any, as set forth in its application for withdrawal or as last changed by notice delivered to the secretary of state for filing or to the address for service of process that is stated in its application for withdrawal or as last changed by notice delivered to the secretary of state for filing.~~

~~—— (2) Service effected pursuant to paragraph (b) of subsection (1) of this section is perfected at the earliest of:~~

~~—— (a) The date the withdrawn foreign nonprofit corporation receives the process, notice, or demand;~~

~~—— (b) The date shown on the return receipt, if signed on behalf of the withdrawn foreign nonprofit corporation; or~~

~~—— (c) Five days after mailing by first class mail.~~

~~—— (3) Subsection (1) of this section does not prescribe the only means, or necessarily the required means, of serving a withdrawn foreign nonprofit corporation.~~

PART 3 REVOCATION

~~—— 7-135-301. Grounds for revocation. (1) The secretary of state shall commence a proceeding under section 7-135-302 to revoke the authority of a foreign nonprofit corporation to conduct affairs in this state if:~~

~~—— (a) The foreign nonprofit corporation does not deliver its periodic report to the secretary of state when it is due;~~

~~—— (b) The foreign nonprofit corporation does not pay any taxes, fees, or penalties imposed by articles 121 to 137 of this title when they are due;~~

~~—— (c) The foreign nonprofit corporation is without a registered agent or registered office;~~

~~—— (d) The foreign nonprofit corporation does not inform the secretary of state pursuant to sections 7-135-109 and 7-135-110 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued;~~

~~—— (e) An incorporator, director, officer, or agent of the foreign nonprofit corporation caused a document to be delivered to the secretary of state for filing that such person knew was false in any material respect with the intent that the document be delivered to the secretary of state for filing; or~~

~~—— (f) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign nonprofit corporation was incorporated to the effect that it no longer exists as the result of a dissolution or merger.~~

~~—— 7-135-302. Procedure for and effect of revocation. (1) If the secretary of state determines that one or more grounds exist under section 7-135-301 for revoking the authority of a foreign nonprofit corporation to conduct affairs in this state, the secretary of state shall mail by first class mail written notice of the determination to the foreign nonprofit corporation, stating such ground or grounds for revocation.~~

~~—— (2) If the foreign nonprofit corporation does not correct each ground for revocation, or demonstrate to the reasonable satisfaction of the secretary of state that each such ground does not exist, within sixty days after mailing of the notice specified in subsection (1) of this section, the secretary of state may revoke the foreign nonprofit corporation's authority to conduct affairs in this state. The secretary of state shall mail by first class mail written notice of the revocation, stating the effective date thereof, to the foreign nonprofit corporation and shall mail a copy of such notice to the last registered agent of the foreign nonprofit corporation.~~

~~—— (3) Revocation of a foreign nonprofit corporation's authority to conduct affairs in this state terminates the authority of the registered agent of the foreign nonprofit corporation.~~

~~—— (4) Upon the revocation of a foreign nonprofit corporation's authority to conduct affairs in this state, the secretary of state shall be the foreign nonprofit corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign nonprofit corporation conducted affairs in this state or was authorized to conduct affairs in this state. Service of process on the secretary of state under this subsection (4) is service on the foreign nonprofit corporation. Upon receipt of process, the secretary of state shall deliver a copy of the process to the foreign nonprofit corporation at its principal office.~~

~~—— 7-135-303. Appeal from revocation. (1) A foreign nonprofit corporation may appeal the secretary of state's revocation of its authority to conduct affairs in this state to the district court in and for the city and county of Denver or to the district court of the county in this state where the foreign nonprofit corporation's registered or principal office is located, within thirty days after mailing of the notice of revocation, by petitioning the court to set aside the revocation and attaching to the petition copies of its application for authority to conduct affairs and any amended applications, each as filed, and the secretary of state's notice of revocation.~~

~~—— (2) The court may summarily order the secretary of state to reinstate the authority of a foreign nonprofit corporation to conduct affairs in this state or may take any other action the court considers appropriate.~~

~~—— (3) The court's order or decision may be appealed as in other civil proceedings.~~

ARTICLE 136

Records, Information, and Reports

7-136-101. Corporate records. (1) A nonprofit corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members

or board of directors without a meeting, a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the nonprofit corporation, and a record of all waivers of notices of meetings of members and of the board of directors or any committee of the board of directors.

(2) A nonprofit corporation shall maintain appropriate accounting records.

(3) A nonprofit corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the name and address of all members in alphabetical order, by class, showing the number of votes each member is entitled to vote.

(4) A nonprofit corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A nonprofit corporation shall keep a copy of each of the following records at its principal office:

(a) Its articles of incorporation;

(b) Its bylaws;

(c) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(d) The minutes of all members' meetings, and records of all action taken by members without a meeting, for the past three years;

(e) All written communications within the past three years to members generally as members;

(f) A list of the names and business or home addresses of its current directors and officers;

(g) A copy of its most recent **periodic annual** report ~~delivered to the secretary of state under section 7-136-107 pursuant to part 5 of article 90 of this title~~; and

(h) All financial statements prepared for periods ending during the last three years that a member could have requested under section 7-136-106.

7-136-102. Inspection of corporate records by members. (1) A member is entitled to inspect and copy, during regular business hours at the nonprofit corporation's principal office, any of the records of the nonprofit corporation described in section 7-136-101 (5) if the member gives the nonprofit corporation written demand at least five business days before the date on which the member wishes to inspect and copy such records.

(2) Pursuant to subsection (5) of this section, a member is entitled to inspect and copy, during regular business hours at a reasonable location **specified stated** by the nonprofit corporation, any of the other records of the nonprofit corporation if the member meets the requirements of subsection (3) of this section and gives the nonprofit corporation written demand at least five business days before the date on which the member wishes to inspect and copy such records.

(3) A member may inspect and copy the records described in subsection (2) of this section only if:

(a) The member has been a member for at least three months immediately preceding the demand to inspect or copy or is a member holding at least five percent of the voting power as of the date the demand is made;

(b) The demand is made in good faith and for a proper purpose;

(c) The member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(d) The records are directly connected with the described purpose.

(4) For purposes of this section:

(a) "Member" includes a beneficial owner whose membership interest is held in a voting trust and any other beneficial owner of a membership interest who establishes beneficial ownership.

(b) "Proper purpose" means a purpose reasonably related to the demanding member's interest as a member.

(5) The right of inspection granted by this section may not be abolished or limited by the articles of incorporation or bylaws.

(6) This section does not affect:

(a) The right of a member to inspect records under section 7-127-201;

(b) The right of a member to inspect records to the same extent as any other litigant if the member is in litigation with the nonprofit corporation; or

(c) The power of a court, independent of articles 121 to 137 of this title, to compel the production of corporate records for examination.

7-136-103. Scope of member's inspection right. (1) A member's agent or attorney has the same inspection and copying rights as the member.

(2) The right to copy records under section 7-136-102 includes, if reasonable, the right to receive copies made by photographic, xerographic, electronic, or other means.

(3) Except as provided in section 7-136-106, the nonprofit corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production and reproduction of the records.

(4) The nonprofit corporation may comply with a member's demand to inspect the record of members under section 7-136-102 (2) (c) by furnishing to the member a list of members that complies with section 7-136-101 (3) and was compiled no earlier than the date of the member's demand.

7-136-104. Court-ordered inspection of corporate records. (1) If a nonprofit corporation refuses to allow a member, or the member's agent or attorney, who complies with section 7-136-102 (1) to inspect or copy any records that the member is entitled to inspect or copy by said section, the district court **of for** the county in this state ~~where~~ **in which the street address of** the nonprofit corporation's principal

office is located or, if the nonprofit corporation has no principal office in this state, the district court **of for** the county in which *the street address of* its registered **office agent** is located or, if the nonprofit corporation has no registered **office agent**, the district court for the city and county of Denver may, on application of the member, summarily order the inspection or copying of the records demanded at the nonprofit corporation's expense.

(2) If a nonprofit corporation refuses to allow a member, or the member's agent or attorney, who complies with section 7-136-102 (2) and (3) to inspect or copy any records that the member is entitled to inspect or copy pursuant to section 7-136-102 (2) and (3) within a reasonable time following the member's demand, the district court **of for** the county in this state **where in which the street address of** the nonprofit corporation's principal office is located or, if the nonprofit corporation has no principal office in this state, the district court **of for** the county in which *the street address of* its registered **office agent** is located or, if the nonprofit corporation has no registered **office agent**, the district court for the city and county of Denver may, on application of the member, summarily order the inspection or copying of the records demanded.

(3) If a court orders inspection or copying of the records demanded, unless the nonprofit corporation proves that it refused inspection or copying in good faith because it had a reasonable basis for doubt about the right of the member, or the member's agent or attorney, to inspect or copy the records demanded:

(a) The court shall also order the nonprofit corporation to pay the member's costs, including reasonable counsel fees, incurred to obtain the order;

(b) The court may order the nonprofit corporation to pay the member for any damages the member incurred;

(c) If inspection or copying is ordered pursuant to subsection (2) of this section, the court may order the nonprofit corporation to pay the member's inspection and copying expenses; and

(d) The court may grant the member any other remedy provided by law.

(4) If a court orders inspection or copying of records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

7-136-105. Limitations on use of membership list. (1) Without consent of the board of directors, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member.

(2) Without limiting the generality of subsection (1) of this section, without the consent of the board of directors a membership list or any part thereof may not be:

(a) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the nonprofit corporation;

(b) Used for any commercial purpose; or

(c) Sold to or purchased by any person.

7-136-106. Financial statements. Upon the written request of any member, a nonprofit corporation shall mail to such member its most recent annual financial statements, if any, and its most recently published financial statements, if any, showing in reasonable detail its assets and liabilities and results of its operations.

7-136-107. Periodic report to secretary of state. ~~Each domestic corporation and each foreign corporation authorized to transact business in this state shall comply with the periodic reporting requirements of part 5 of article 90 of this title.~~ *Part 5 of article 90 of this title, providing for reports from reporting entities, applies to domestic nonprofit corporations and applies to foreign nonprofit corporations that are authorized to transact business or conduct activities in this state.*

321. <i>Reason for change:</i> This more clearly specifies that all of the provisions of part 5 of article 90 of this title apply to domestic nonprofit corporations and to foreign nonprofit corporations that are "reporting entities."

<i>Note re Change in 2004:</i> To reflect H.B. 03-1377's change in terminology from "periodic report" to "annual report" and to match the language of the section as amended, the caption to this § 7-136-107 should probably be changed to " Periodic report Reports to secretary of state."

7-136-108. Statement of person named as director or officer. (Repealed)

7-136-109. Interrogatories by secretary of state. (1) The secretary of state may propound to any nonprofit corporation, domestic or foreign, subject to the provisions of articles 121 to 137 of this title and to any officer or director thereof such interrogatories as may be reasonably necessary and proper to enable the secretary of state to ascertain whether the nonprofit corporation has complied with all the provisions of articles 121 to 137 of this title applicable to the nonprofit corporation. The interrogatories shall be answered within thirty days after the mailing thereof or within such additional time as fixed by the secretary of state, and the answers thereto shall be full and complete and shall be made in writing. If the interrogatories are directed to an individual, they shall be answered by the individual, and if directed to a nonprofit corporation, they shall be answered by the chairman of the board of directors of the nonprofit corporation, by all of its directors, by one of its officers, or by any other person authorized to answer the interrogatories as the nonprofit corporation's agent. The secretary of state need not file any document to which such interrogatories relate until the interrogatories are answered as provided in this section, and not then if the answers thereto disclose that the document is not in conformity with the provisions of articles 121 to 137 of this title. 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 articles 121 to 137 of this title.

(2) Interrogatories propounded by the secretary of state, and the answers thereto, shall not be open to public inspection nor shall the secretary of state disclose any facts or information obtained therefrom, except as the official duties of the secretary of state may require the same to be made public, or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this state.

(3) Each domestic or foreign nonprofit corporation that fails or refuses to answer truthfully and fully, within the time prescribed by subsection (1) of this section, interrogatories propounded to the domestic or foreign nonprofit corporation by the secretary of state in accordance with the provisions of subsection (1) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars.

(4) Each officer and director of a domestic or foreign nonprofit corporation who fails or refuses to answer truthfully and fully, within the time prescribed by subsection (1) of this section, interrogatories propounded to the officer or director by the secretary of state in accordance with the provisions of subsection (1) of this section or who **signs delivers or causes** a document **to be** delivered the secretary of state pursuant to any provision of articles 121 to 137 of this title, for filing pursuant to part 3 of article 90 of this title, which is known to such officer or director to be false in any material respect, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars.

(5) The attorney general may enforce the provisions of this section in an action brought in the district court **of for** the county in this state **where in which the street address of** the nonprofit corporation's principal office or **the street address of its** registered **office agent** is located or, if the nonprofit corporation has no principal **office in this state and no** or registered **office agent, in this state**, in the district court in and for the city and county of Denver.

ARTICLE 137 Transition Provisions

PART 1 APPLICATION OF ACT

7-137-101. Application to existing corporations. (1) (a) For purposes of this article, "existing corporate entity" means any corporate entity that was in existence on June 30, 1998, and that was incorporated under articles 20 to 29 of this title or elected to accept such articles as provided therein.

(b) A corporate entity that was either incorporated under or elected to accept articles 20 to 29 of this title and that was suspended or, as a consequence of such suspension, dissolved by operation of law before July 1, 1998, and was eligible for reinstatement or restoration, renewal, and revival on June 30, 1998, shall be deemed to be in existence on that date for purposes of this subsection (1) and shall be deemed administratively dissolved on the date of such suspension for purposes of sections 7-134-105 and 7-134-201 to 7-134-205.

(2) Subject to this section, articles 121 to 137 of this title apply to all existing corporate entities subject to articles 20 to 29 of this title.

(3) Unless the articles of incorporation or bylaws of an existing corporate entity recognize the right of a member to transfer such member's membership interests in such corporate entity, such interests shall be presumed to be nontransferable. However, if the transferability of such interests is not prohibited by such articles of incorporation or bylaws, such transferability may be established by a preponderance of the evidence taking into account any representation made by the corporate entity, the practice of such corporate entity, other transactions involving such interests, and other facts bearing on the existence of the rights to transfer such interests.

(4) Until the articles of incorporation of an existing corporate entity are amended or restated on or after July 1, 1998, they need not be amended or restated to comply with articles 121 to 137 of this title.

(5) Unless changed by an amendment to its articles of incorporation, members or classes of members of an existing corporate entity shall be deemed to be voting members for purposes of articles 121 to 137 of this title if such members or classes of members, on June 30, 1998, had the right by reason of a

provision of the corporate entity's articles of incorporation or bylaws, or by a custom, practice, or tradition, to vote for the election of a director or directors.

(6) The bylaws of an existing corporate entity may be amended as provided in its articles of incorporation or bylaws. Unless otherwise so provided, the power to amend such bylaws shall be vested in the board of directors.

7-137-102. Pre-1968 corporate entities - failure to file reports and designate registered offices and agents - dissolution. (1) Corporate entities ~~which that~~ were **organized formed** prior to January 1, 1968, and ~~which that~~ did not elect to be governed by articles 20 to 29 of this title and could, if they so elected, elect to be governed by articles 121 to 137 of this title, but ~~which that~~ have not done so, ~~shall are~~ nevertheless **be reporting entities that are** subject to ~~section 7-136-107 part 5 of article 90 of this title, providing for reports from reporting entities, and are required to file periodic reports and pay the filing fees therefor as provided in said articles.~~ **Such corporate entities shall also designate and maintain registered offices and registered agents as provided in section 7-125-101. Such registered agents shall be the agents for service of process on said corporate entities as provided in section 7-125-104, and, in the event such registered agent is not maintained, process may be served on such corporate entity as set forth in section 7-125-104 and are domestic entities that are subject to part 7 of article 90 of this title, providing for registered agents and service of process.**

322. <i>Note re Change in 2004:</i> The caption should be "Pre-1968 corporate entities - failure to file reports and designate registered offices and agents - dissolution."

(2) Every corporate entity that could or has elected to be governed by articles 20 to 29 or 121 to 137 of this title whose articles of incorporation, affidavit of incorporation, or other basic corporate charter, by whatever name denominated, is not on file in the office of the secretary of state shall file a certified copy of such articles of incorporation, affidavit of incorporation, or other basic corporate charter in the office of the secretary of state. Such certified copy may be secured from any clerk or recorder with whom the instrument may be filed or recorded.

(3) If any corporate entity, **organized formed** prior to January 1, 1968, that could elect to be governed by articles 20 to 29 or 121 to 137 of this title, but ~~which that~~ has not so elected and has failed to file **periodic annual** reports or designate a registered **office and** agent, may be administratively dissolved pursuant to sections 7-134-201 and 7-134-202 and reinstated pursuant to ~~sections 7-134-203 and 7-134-204 part 10 of article 90 of this title.~~

(4) Any corporate entity **organized formed** prior to January 1, 1968, that could elect to be governed by articles 20 to 29 of this title, that was suspended or was declared defunct, but not dissolved by operation of law under section 7-20-105 before July 1, 1998, and that was eligible for reinstatement on June 30, 1998, shall be deemed administratively dissolved on the date of such suspension for purposes of sections 7-134-105 and 7-134-201 to 7-134-204 and may reinstate itself as a nonprofit corporation as provided in ~~sections 7-134-203 and 7-134-204 part 10 of article 90 of this title.~~

(5) Any nonprofit corporate entity **organized formed** prior to January 1, 1968, that could elect to be governed by articles 20 to 29 of this title, that was suspended, declared defunct, administratively dissolved, or dissolved by operation of law, and continues to operate for nonprofit purposes and does not wind up its business and affairs, shall be deemed an unincorporated organization that qualifies as a nonprofit association as provided in section 7-30-101.1 for purposes of the "Uniform Unincorporated Nonprofit

Association Act", article 30 of this title, unless such corporate entity is eligible to reinstate itself as a nonprofit corporation as provided in ~~subsection (4) of this section or sections 7-134-203 and 7-134-204~~ *part 10 of article 90 of this title* and does so reinstate itself.

7-137-103. Application to foreign nonprofit corporations. A foreign nonprofit corporation authorized to *transact business or* conduct **affairs activities** in this state on June 30, 1998, is subject to articles 121 to 137 of this title but is not required to obtain new authorization to *transact business or* conduct **affairs activities** under said articles.

PART 2
ELECTION BY PRE-1968
CORPORATE ENTITIES

7-137-201. Procedure to elect to accept articles 121 to 137 of this title. (1) Any corporate entity with shares of capital stock **organized formed** before January 1, 1968, under article 40, 50, or 51 of this title, any corporate entity **organized formed** before January 1, 1968, under article 40 or 50 of this title without shares of capital stock, and any corporate entity whether with or without shares of capital stock and **organized formed** before January 1, 1968, under any general law or created by any special act of the general assembly for a purpose for which a nonprofit corporation may be **organized formed** under articles 121 to 137 of this title may elect to accept said articles in the following manner:

(a) If there are members or stockholders entitled to vote thereon, the board of directors shall adopt a resolution recommending that the corporate entity accept articles 121 to 137 of this title and directing that the question of acceptance be submitted to a vote at a meeting of the members or stockholders entitled to vote thereon, which may be either an annual or special meeting. The question shall also be submitted whenever one-twentieth of the members or stockholders entitled to vote thereon so request. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider electing to accept said articles shall be given to each member or stockholder entitled to vote at the meeting within the time and in the manner provided in said articles for the giving of notice of meetings to members or stockholders. Such election to accept said articles shall require for adoption at least two-thirds of the votes **which that** members or stockholders present at such meeting in person or by proxy are entitled to cast.

(b) If there are no members or stockholders entitled to vote thereon, election to accept articles 121 to 137 of this title may be made at a meeting of the board of directors pursuant to a majority vote of the directors in office.

~~(c)~~ (2) In effecting **such** acceptance *of articles 121 to 137 of this title*, the corporate entity shall follow the requirements of the law under which it was **organized formed**, its articles of incorporation, and its bylaws so far as applicable.

~~(d)~~ (3) If the *domestic* entity name *of the corporate entity accepting articles 121 to 137 of this title* is not in conformity with ~~the provisions of~~ part 6 of article 90 of this title, the corporate entity shall change its *domestic entity* name to conform with part 6 of article 90 of this title. The adoption of a *domestic entity* name that is in conformity with said part 6 by the members or stockholders of the corporate entity, and its inclusion in the statement of election to accept said articles 121 to 137 as the entity name, and the issuance of a certificate of acceptance by the secretary of state shall be the only action necessary to effect such change. The articles of incorporation, affidavit, or other basic organizational charter shall be deemed for all purposes amended to conform to such entity name.

(e) ~~If the corporate entity does not have a registered office and a registered agent registered in the office of the secretary of state, it shall comply with section 7-125-101 regarding the maintenance of such office and agent.~~

323. *Reason for change:* New § 7-137-201(2) applies the provisions of part 7 of article 90 of this title to corporate entities electing under this part.

(f) (4) All corporate entities *accepting articles 121 to 137 of this title* whose articles of incorporation, affidavits of incorporation, or other basic charters, by whatever names denominated, are not on file in the office of the secretary of state as required by section 7-137-102 (2) shall deliver *to the secretary of state, for filing pursuant to part 3 of article 90 of this title*, a certified copy of such articles of incorporation, affidavits of incorporation, or other basic charters ~~in the office of the secretary of state~~ at the time of delivery of the statement of election to accept articles 121 to 137 of this title.

(5) *All corporate entities accepting articles 121 to 137 of this title shall be reporting entities subject to part 5 of article 90 of this title, providing for reports from reporting entities, and shall be subject to part 7 of article 90 of this title, providing for registered agents and service of process.*

7-137-202. Statement of election to accept articles 121 to 137 of this title. (1) A statement of election to accept articles 121 to 137 of this title shall ~~set forth~~ state:

- (a) The *domestic entity* name of the corporate entity;
- (b) A statement by the corporate entity that it has elected to accept said articles and that all required reports have been or will be filed and all fees, taxes, and penalties due to the state of Colorado accruing under any law to which the corporate entity heretofore has been subject have been paid;
- (c) If there are members or stockholders entitled to vote thereon, a statement ~~setting forth~~ *stating* the date of the meeting of such members or stockholders at which the election to accept articles 121 to 137 of this title was made, that a quorum was present at the meeting, and that such acceptance was authorized by at least two-thirds of the votes ~~which that~~ members or stockholders present at such meeting in person or by proxy were entitled to cast;
- (d) If there are no members or stockholders entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which election to accept said articles was made, that a quorum was present at the meeting, and that such acceptance was authorized by a majority vote of the directors in office;
- (e) A statement that the corporate entity followed the requirements of the law under which it was ~~organized~~ *formed*, its articles of incorporation, and its bylaws so far as applicable in effecting such acceptance;
- (f) The ~~street~~ *registered agent name and registered agent* address of the *corporate entity's* registered ~~office agent; of the corporate entity and the name of the registered agent at such address;~~
- (g) The names and respective addresses of its officers and directors;
- (h) A statement that any attached copy of the articles of incorporation, affidavit, or other basic corporate charter of the corporate entity is true and correct;

(i) If the corporate entity has issued shares of stock, a statement of such fact including the number of shares heretofore authorized, the number issued and outstanding, and a statement that all issued and outstanding shares of stock have been delivered to the corporate entity to be canceled upon the acceptance of articles 121 to 137 of this title by the corporate entity becoming effective and that from and after the effective date of said acceptance the authority of the corporate entity to issue shares of stock is terminated; except that this shall not apply to corporate entities **organized formed** for the acquisition and distribution of water to their stockholders.

7-137-203. Filing statement of election to accept articles 121 to 137 of this title. The statement of election to accept articles 121 to 137 of this title shall be delivered to the secretary of state for filing pursuant to part 3 of article 90 of this title.

7-137-204. Effect of certificate of acceptance. (1) Upon the filing by the secretary of state of the statement of election to accept articles 121 to 137 of this title, the election of the corporate entity to accept said articles shall become effective.

(2) A corporate entity so electing under articles 121 to 137 of this title or corresponding provision of prior law shall have the same powers and privileges and be subject to the same duties, restrictions, penalties, and liabilities as though such corporate entity had been originally **organized formed** under said articles and shall also be subject to any duties or obligations expressly imposed upon the corporate entity by a special charter, subject to the following:

(a) If no period of duration is expressly fixed in the articles of incorporation of such corporate entity, its period of duration shall be deemed to be perpetual.

(b) No amendment to the articles of incorporation adopted after such election to accept articles 121 to 137 of this title shall release or terminate any duty or obligation expressly imposed upon any such corporate entity under and by virtue of a special charter or enlarge any right, power, or privilege granted to any such corporate entity under a special charter, except to the extent that such right, power, or privilege might have been included in the articles of incorporation of a corporate entity **organized formed** under said articles.

(c) In the case of any corporate entity with issued shares of stock, the holders of such issued shares who surrender them to the corporate entity to be canceled upon the acceptance of said articles by the corporate entity becoming effective shall become members of the corporate entity with one vote for each share of stock so surrendered until such time as the corporate entity by proper corporate action relative to the election, qualification, terms, and voting power of members shall otherwise prescribe.

PART 3 SAVING PROVISIONS

7-137-301. Saving provisions. (1) Except as provided in subsection (3) of this section, the repeal of any provision of the "Colorado Nonprofit Corporation Act", articles 20 to 29 of this title, does not affect:

(a) The operation of the statute, or any action taken under it, before its repeal;

(b) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the provision before its repeal;

(c) Any violation of the provision, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal; or

(d) Any proceeding or reorganization commenced under the provision before its repeal, and the proceeding or reorganization may be completed in accordance with the provision as if it had not been repealed.

(2) Except as provided in subsection (3) of this section or in sections 7-137-101 (1) (b) and 7-137-102 (4) for the reinstatement, as provided in ~~sections 7-134-103 and 7-134-104~~ **part 10 of article 90 of this title**, of a corporate entity suspended, declared defunct, or administratively dissolved before July 1, 1998, any dissolution commenced under the provision before its repeal may be completed in accordance with the provision as if it had not been repealed.

(3) If a penalty or punishment imposed for violation of any provision of the "Colorado Nonprofit Corporation Act", articles 20 to 29 of this title, is reduced by articles 121 to 137 of this title, the penalty or punishment, if not already imposed, shall be imposed in accordance with said articles.