

**Note to all readers: You should seek professional guidance before relying on a particular clause for support since some statutory language can be confusing to laypersons, it may not be apparent to the uninitiated that some language IS helpful AND courts frequently interpret language in ways that are not apparent to laypersons."**

Taken from Website: [http://lis.njleg.state.nj.us/cgi-bin/om\\_isapi.dll?clientID=201519428&Depth=2&depth=2&expandheadings=on&headingswithhits=on&hitsperheading=on&infobase=statutes.nfo&record={5033}&softpage=Doc\\_Frame\\_PG42](http://lis.njleg.state.nj.us/cgi-bin/om_isapi.dll?clientID=201519428&Depth=2&depth=2&expandheadings=on&headingswithhits=on&hitsperheading=on&infobase=statutes.nfo&record={5033}&softpage=Doc_Frame_PG42)

## **TITLE 15A**

### **TITLE 15A CORPORATIONS, NONPROFIT**

#### **15A:1-1. Short title; purposes; rules of construction; variation**

- a. This title shall be known and may be cited as the "New Jersey Nonprofit Corporation Act."
- b. This title shall be liberally construed and applied to promote its underlying purposes and policies.
- c. Underlying purposes and policies of this title are, among others:
  - (1) to simplify, clarify and modernize the law governing nonprofit corporations;
  - (2) to provide a general corporate form for the conduct of lawful, nonprofit activities with such variations and modifications from the form so provided as the interested parties in any nonprofit corporation may agree upon, subject only to overriding interests of this State and of third parties; and
  - (3) to make the law governing nonprofit corporations as nearly compatible with the New Jersey Business Corporation Act (N.J.S. 14A:1-1 et seq.) as may be practicable, subject to the particular requirements of nonprofit corporations.
- d. The presence in certain provisions of this title of the words "unless otherwise provided in the certificate of incorporation" or "unless otherwise provided in the certificate of incorporation or bylaws," or words of similar import, does not imply that the effect of other provisions may not be varied by provisions in the certificate of incorporation or bylaws.

L.1983, c. 127, s. 15A:1-1, eff. Oct. 1, 1983.

#### **15A:1-2. Definitions**

As used in this title:

- a. "Act" means the "New Jersey Nonprofit Corporation Act" ;
- b. "Board" means the board of trustees or the group of persons vested with management of the business and affairs of the corporation irrespective of the name by which the group is designated;

"entire board" means all the trustees then in office;

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

d. "Certificate of incorporation" includes:

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

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

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

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

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

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

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

L.1983, c. 127, s. 15A:1-2, eff. Oct. 1, 1983.

### **15A:1-3. Application of act**

a. This act shall apply to:

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

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

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

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

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

L.1983, c. 127, s. 15A:1-3, eff. Oct. 1, 1983.

#### **15A:1-4. Certain corporations organized under other acts; reincorporation or conversion**

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

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

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

(a) the terms and conditions of the conversion,

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

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

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

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

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

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

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

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

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

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

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

L.1983, c. 127, s. 15A:1-4, eff. Oct. 1, 1983.

#### **15A:1-5. Authorization to corporations which could be or are organized under title 16 of the revised statutes to adopt provisions of this act without reincorporation**

a. Any corporation organized for any purpose for which corporations may be incorporated under Title 16 of the Revised Statutes which is not organized under this act and which has not reincorporated under this act pursuant to section 15A:1-4 may amend its certificate of incorporation or its bylaws to include provisions incorporating by reference any sections of this act to which the corporation wishes to be subject.

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

L.1983, c. 127, s. 15A:1-5, eff. Oct. 1, 1983.

#### **15A:1-6. Reservation of power**

This act may be supplemented, altered, amended or repealed by the Legislature and every corporation, domestic or foreign, to which this act applies shall be bound thereby.

L.1983, c. 127, s. 15A:1-6, eff. Oct. 1, 1983.

#### **15A:1-7. Execution, filing and recording of documents**

a. If a document relating to a domestic or foreign corporation is required or permitted to be filed in the office of the Secretary of State under this act:

(1) The document shall be in the English language, except that the corporate name need not be in the

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

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

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

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

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

(1) The corporate seal;

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

(3) An acknowledgment or proof.

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

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

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

e. If any instrument filed with the Secretary of State under any provision of this act is an inaccurate record of the corporate action therein referred to, or was defectively or erroneously executed, the instrument may be corrected by filing with the Secretary of State a certificate of correction executed on behalf of the corporation. The certificate of correction shall specify the inaccuracy or defect to be corrected and shall set forth the correction. The instrument as corrected shall be deemed to have been

effective in its corrected form as of its original filing date, but as to persons who relied upon the inaccurate portion of the certificate and who are adversely affected by the correction, the correction shall be effective as of the effective date of filing the certificate of correction.

L.1983, c. 127, s. 15A:1-7, eff. Oct. 1, 1983.

#### **15A:1-8. Repeal of prior acts**

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

L.1983, c. 127, s. 15A:1-8, eff. Oct. 1, 1983.

#### **15A:1-9. Notices; computation of time; effect of postage class used**

a. In computing the period of time for the giving of any notice required or permitted by this act, or by a certificate of incorporation or bylaws or any resolution of trustees or members, the day on which the notice is given shall be excluded, and the day on which the matter noticed is to occur shall be included.

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

L.1983, c. 127, s. 15A:1-9, eff. Oct. 1, 1983.

#### **15A:1-10. Certificates and certified copies**

a. Upon request of any person, the Secretary of State shall furnish certified copies of documents filed in the office of the Secretary of State in accordance with the provisions of this act.

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

L.1983, c. 127, s. 15A:1-10, eff. Oct. 1, 1983.

#### **15A:2-1. Purposes**

a. A corporation may be organized under this act for any lawful purpose other than for pecuniary profit including, without being limited to, any one or more of the following purposes: charitable; benevolent; eleemosynary; educational; cemetery; civic; patriotic; political; religious; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; volunteer fire company; ambulance, first aid or rescue; professional, commercial, industrial or trade association; and labor union and cooperative purposes.

b. A corporation for which organization is permitted under any other statute of this State may not be

organized under this act unless that statute permits organization under this act.

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

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

L.1983, c. 127, s. 15A:2-1, eff. Oct. 1, 1983.

### **15A:2-2. Corporate name of domestic or foreign corporation**

a. The corporate name of a domestic corporation or of a foreign corporation authorized to transact business in this State:

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

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

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

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

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

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

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

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

e. The filing in the office of the Secretary of State of the certificate of incorporation of a domestic corporation or the issuance by the Secretary of State of a certificate to a foreign corporation authorizing it to conduct activities in this State shall not preclude an action by this State to enjoin a violation of this section or an action by any person adversely affected to enjoin the violation or the use of a corporate name in violation of the rights of that person, whether on principles of unfair competition or otherwise. The court may grant any other appropriate relief.

L.1983, c. 127, s. 15A:2-2, eff. Oct. 1, 1983.

### **15A:2-3. Use of name other than actual corporate name**

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

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

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

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

b. Any corporation may adopt and use any alternate name, including any which would be unavailable as the name of a domestic or foreign corporation because of the prohibitions of paragraph (2) of subsection a. of section 15A:2-2, but not including any name prohibited as a corporate name by paragraph (3) or (4) of subsection a. of section 15A:2-2, by filing an original and a copy of a certificate



of registration of alternate name with the Secretary of State executed on behalf of the corporation. The Secretary of State shall forward the copy to the Attorney General. The certificate shall set forth:

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

(2) The alternate name;

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

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

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

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

d. This section shall not:

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

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

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

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

g. (1) A corporation which files a certificate of registration of alternate name which contains a false statement or omission regarding the date it first used an alternate name in this State shall, if the false statement or omission reduces the amount of the additional fee it paid or should have paid as provided in

subsection e. of this section, forfeit to the State a penalty of not less than \$200.00 nor more than \$500.00.

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

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

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

L.1983, c. 127, s. 15A:2-3, eff. Oct. 1, 1983.

#### **15A:2-4. Reserved name**

a. The exclusive right to the use of a corporate name may be reserved upon compliance with the provisions of this section.

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

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

L.1983, c. 127, s. 15A:2-4, eff. Oct. 1, 1983.

#### **15A:2-5. Registered name**

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

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

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

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

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

L.1983, c. 127, s. 15A:2-5, eff. Oct. 1, 1983.

#### **15A:2-6. Renewal of registered name**

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

L.1983, c. 127, s. 15A:2-6, eff. Oct. 1, 1983.

#### **15A:2-7. Incorporators**

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

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

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

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

L.1983, c. 127, s. 15A:2-7, eff. Oct. 1, 1983.

#### **15A:2-8. Certificate of incorporation**

15A:2-8. Certificate of incorporation.

a. The certificate of incorporation shall set forth:

- (1) The name of the corporation;
- (2) The purpose or purposes for which the corporation is organized;
- (3) If the corporation is to have members, the qualifications for members or that the qualifications shall be as set forth in the bylaws of the corporation;
- (4) If the members are to be divided into classes, the relative right and limitations of the different

classes of members to the extent those rights and limitations have been determined or that the rights and limitations shall be as set forth in the bylaws of the corporation;

(5) If the corporation is to have no members, that there shall be no members;

(6) The method of electing trustees or that the method shall be as set forth in the bylaws of the corporation;

(7) Any provision not inconsistent with this act or any other statute of this State, which the incorporators elect to set forth for the management and conduct of the affairs of the corporation, or creating, defining, limiting or regulating the powers of the corporation, its trustees and members or any class of members, including any provision which under this act is required or permitted to be set forth in the bylaws;

(8) The address, including actual location as well as postal designation, if different, of the corporation's initial registered office, and the name of the corporation's initial registered agent at that address;

(9) The number of trustees, not less than three, constituting the first board and the names and addresses of the persons who aim to serve as trustees, which addresses shall be either the residence address of the person or other address where the person regularly receives mail and which is not the address of the corporation;

(10) The names and addresses of the incorporators, which addresses shall be either the residence address of the person or other address where the person regularly receives mail and which is not the address of the corporation;

(11) The duration of the corporation if other than perpetual;

(12) The method of distribution of assets of the corporation upon dissolution, or that the distribution shall be as set forth in the bylaws of the corporation;

(13) If, pursuant to subsection b. of this section, the certificate of incorporation is to be effective on a date subsequent to the date of filing, the effective date of the certificate;

(14) If, pursuant to the exception in paragraph (4) of subsection a. of section 15A:2-2, the name of the corporation does not include a term required thereby, a statement that the corporation could be organized pursuant to the provisions of Title 16 of the Revised Statutes, the applicable section of Title 16 of the Revised Statutes permitting that organization, and an undertaking to add the required term if the corporation ceases to be so organized.

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

c. The certificate of incorporation may provide that a trustee or officer shall not be personally liable,

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

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

L.1983, c.127, s.15A:2-8, eff. Oct. 1, 1983; amended 1989,c.260,s.1.

### **15A:2-9. Organization meeting of board of trustees**

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

L.1983, c. 127, s. 15A:2-9, eff. Oct. 1, 1983.

### **15A:2-10. Bylaws; making and altering**

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

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

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

L.1983, c. 127, s. 15A:2-10, eff. Oct. 1, 1983.

### **15A:2-11. Bylaws and other powers in emergency**

a. The board of a corporation may adopt emergency bylaws, subject to repeal or change by action of the members, which shall, notwithstanding any different provision elsewhere in this act or in the certificate of incorporation or bylaws, be operative during any emergency in the conduct of the business of the corporation resulting from an attack on the United States or any nuclear or atomic disaster. The emergency bylaws may make any provision that may be practical and necessary for the circumstances of

the emergency, including provisions that:

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

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

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

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

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

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

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

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

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

L.1983, c. 127, s. 15A:2-11, eff. Oct. 1, 1983.

### **15A:2-12. Chapter organizations**

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

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

(1) Grant charters to subordinate or local chapters;

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

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

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

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

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

L.1983, c. 127, s. 15A:2-12, eff. Oct. 1, 1983.

### **15A:3-1. General powers**

a. Each corporation, subject to any limitations provided in this act or other statute of this State, or in its certificate of incorporation or bylaws, may:

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

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

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

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

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

(6) purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange,

mortgage, lend, create a security interest in, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporate entities, associations, partnerships or individuals, or direct or indirect obligations of any domestic or foreign government or instrumentality thereof;

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

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

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

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

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

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

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

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

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

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

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

L.1983, c. 127, s. 15A:3-1, eff. Oct. 1, 1983.

### **15A:3-2. Ultra vires transactions**

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



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

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

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

L.1983, c. 127, s. 15A:3-2, eff. Oct. 1, 1983.

### **15A:3-3. Contributions by corporations**

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

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

L.1983, c. 127, s. 15A:3-3, eff. Oct. 1, 1983.

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

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

a. As used in this section:

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

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

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

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

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

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

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

(2) with respect to any criminal proceeding, the corporate agent had no reasonable cause to believe the conduct was unlawful. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the corporate agent did not meet the applicable standards of conduct set forth in paragraphs (1) and (2) of subsection b. of this section.

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

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

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

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

(2) If the quorum is not obtainable, or, even if obtainable and the quorum of the boards of trustees or

committee by a majority vote of the disinterested trustees directs, by independent legal counsel, in a written opinion, the counsel to be designated by the board of trustees; or

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

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

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

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

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

(2) Application for indemnification may be made:

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

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

(3) If the application is for indemnification arising out of a civil action, it shall set forth reasonable cause for the failure to make application for the relief in the action or proceeding in which the expenses were or are to be incurred or other amounts were or are to be paid. The application shall set forth the disposition of any previous application for indemnification and shall be made in the manner and form as may be required by the applicable rules of the court or, in the absence thereof, by direction of the court to which it is made. The application shall be upon notice to the corporation. The court may also direct that notice shall be given at the expense of the corporation to the members, if any, and all other persons as it may designate in the manner as it may require.

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

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

indemnify the agent against those expenses and liabilities under the provisions of this section.

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

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

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

L.1983, c.127, s.15A:3-4, eff. Oct. 1, 1983; amended 1989,c.260,s.2.

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

a. No action shall be brought in this State by a member in the right of a domestic or foreign corporation unless the plaintiff was a member at the time of the transaction of which the plaintiff complains.

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

c. In any action now pending or hereafter instituted or maintained in the right of the corporation by less than 5% of the members or any class of members, the corporation in whose right the action is brought shall be entitled at any time before final judgment to require the plaintiff to give security for the reasonable expenses, including fees of attorneys, that may be incurred by it in connection with the action or may be incurred by other parties named as defendant for which it may become legally liable. The amount of the security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or excessive. The corporation shall have recourse to the security in an amount as the court having jurisdiction shall determine upon the termination of the action.

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

L.1983, c. 127, s. 15A:3-5, eff. Oct. 1, 1983.

#### **15A:3A-1 Definitions relative to criminal history background checks for employees, volunteers of youth serving organizations.**

1. As used in this act:

"Criminal history record background check" means a determination of whether a person has a criminal record by cross-referencing that person's name and fingerprints with those on file with the Federal Bureau of Investigation, Identification Division and the State Bureau of Identification in the Division of State Police.

"Department" means the Department of Law and Public Safety.

"Nonprofit youth serving organization" or "organization" means a corporation, association or other organization established pursuant to Title 15 of the Revised Statutes, Title 15A of the New Jersey Statutes, or other law of this State, but excluding public and nonpublic schools, and which provides recreational, cultural, charitable, social or other activities or services for persons younger than 18 years of age, and is exempt from federal income taxes.

L.1999,c.432,s.1.

### **15A:3A-2 Youth serving organization request for criminal background check; costs.**

2. a. A nonprofit youth serving organization may request, through the department, that the State Bureau of Identification in the Division of State Police conduct a criminal history record background check on each prospective and current employee or volunteer of the organization.

b. For the purpose of conducting the criminal history record background check, the division shall examine its own files and arrange for a similar examination by federal authorities. The division shall inform the department whether the person's criminal history record background check reveals a conviction of a disqualifying crime or offense as specified in section 3 of this act.

c. The division shall conduct a criminal history record background check only upon receipt of the written consent to the check of the prospective or current employee or volunteer.

d. The organization or the prospective or current employee or volunteer shall bear the costs associated with conducting criminal history background checks. Notwithstanding any law or regulation to the contrary, the department shall not charge a fee for a criminal history record background check that exceeds the actual cost of conducting that check, as determined by the Attorney General. The Attorney General shall annually certify to the State Treasurer the cost per criminal history background check in the immediately preceding year.

L.1999,c.432,s.2.

### **15A:3A-3 Conditions under which person is disqualified from service.**

3. Except as provided in P.L.2009, c.139 (C.2C:7-22 et al.), a person may be disqualified from serving as an employee or volunteer of a nonprofit youth serving organization if that person's criminal history record background check reveals a record of conviction of any of the following crimes and offenses:

a. In New Jersey, any crime or disorderly persons offense:

(1) involving danger to the person, meaning those crimes and disorderly persons offenses set forth in N.J.S.2C:11-1 et seq., N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq., N.J.S.2C:14-1 et seq. or N.J.S.2C:15-1 et seq.;

(2) against the family, children or incompetents, meaning those crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et seq.;

(3) involving theft as set forth in chapter 20 of Title 2C of the New Jersey Statutes;

(4) involving any controlled dangerous substance or controlled substance analog as set forth in chapter 35 of Title 2C of the New Jersey Statutes except paragraph (4) of subsection a. of N.J.S.2C:35-10.

b. In any other state or jurisdiction, conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in subsection a. of this section.

c. Nothing herein shall be construed to authorize an excluded sex offender, as defined in section 1 of P.L.2009, c.139 (C.2C:7-22), to serve as an employee or volunteer in a youth serving organization or any other entity from which the excluded sex offender is otherwise statutorily disqualified.

L.1999, c.432, s.3; amended 2009, c.139, s.3.

#### **15A:3A-4 Submissions, exchange of background check information.**

4. a. Prospective or current employees and volunteers of nonprofit youth serving organizations shall submit their name, address, fingerprints and written consent to the organization for the criminal history record background check to be performed. The organization shall supply this documentation to the Attorney General, who shall coordinate the background check.

b. The Attorney General is authorized to exchange fingerprint data with, and receive criminal history record information for use by nonprofit youth serving organizations from the Federal Bureau of Investigation, Identification Section and the Division of State Police, Bureau of Identification and such other law enforcement agencies and jurisdictions as may be necessary for the purposes of this act.

c. The department shall act as a clearinghouse for the collection and dissemination of information obtained as a result of conducting criminal history record background checks pursuant to this act.

L.1999,c.432,s.4.

#### **15A:3A-5 Rules, regulations.**

5. The Attorney General, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of this act concerning access to and dissemination of information obtained as a result of conducting a criminal history record background check.

L.1999,c.432,s.5.

#### **15A:4-1. Registered office and registered agent**

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

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

serves conducts activities.

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

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

L.1983, c. 127, s. 15A:4-1, eff. Oct. 1, 1983.

#### **15A:4-2. Function of registered agent and office; service of process, notice or demand**

a. Every registered agent shall be an agent of the corporation which has appointed the agent, upon whom process against the corporation may be served and who shall deliver to the corporation all process, notices or demands received by the agent as agent for the corporation.

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

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

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

L.1983, c. 127, s. 15A:4-2, eff. Oct. 1, 1983.

#### **15A:4-3. Change of registered office or registered agent**

15A:4-3. Change of Registered Office or Registered Agent.

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

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

(1) The name of the corporation;

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

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

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

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

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

L.1983, c.127, s.15A:4-3, eff. Oct. 1, 1983; amended 1997, c.138, s.1.

#### **15A:4-4. Resignation of registered agent**

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

b. The registered agent shall serve a notice of resignation by certified mail, return receipt requested, upon the president, or any vice-president, or the secretary or treasurer of the corporation at the address last known to the agent, and shall make an affidavit of the service. If service cannot be made, the affidavit shall so state, and shall state briefly why the service cannot be made. The affidavit, together with a copy of the notice of resignation, shall be filed in the office of the Secretary of State.



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

L.1983, c. 127, s. 15A:4-4, eff. Oct. 1, 1983.

#### **15A:4-5. Annual report to Secretary of State**

15A:4-5. Annual Report to Secretary of State.

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

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

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

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

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

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

Secretary of State shall provide the forms necessary to effect annual report reinstatements.

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

L.1983, c.127, s.15A:4-5, eff. Oct. 1, 1983; amended 1997, c.138, s.2.

#### **15A:5-1. Place of members' meetings**

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

L.1983, c. 127, s. 15A:5-1, eff. Oct. 1, 1983.

#### **15A:5-2. Annual or biennial meeting of members**

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

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

L.1983, c. 127, s. 15A:5-2, eff. Oct. 1, 1983.

#### **15A:5-3. Special meetings of members**

Special meetings of the members may be called by the president or the board, or by any other officers, trustees or members as may be provided in the bylaws. Notwithstanding any provision in the bylaws, upon the application of not less than 10% of all the members entitled to vote at a meeting, the Superior Court, in an action in which the court may proceed in a summary manner, for good cause shown, may order a special meeting of the members to be called and held at a time and place, upon notice and for the

transaction of such business as may be designated in the order. At any meeting ordered to be called pursuant to this section, the members present in person or by proxy and having voting powers shall constitute a quorum for the transaction of the business designated in such order.

L.1983, c. 127, s. 15A:5-3, eff. Oct. 1, 1983.

#### **15A:5-4. Notice of members' meetings**

a. Except as otherwise provided in this act, written notice of the time, place and purposes of every meeting of members shall be given not less than 10 nor more than 60 days before the date of the meeting, either personally or by mail, to each member of record entitled to vote at the meeting.

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

L.1983, c. 127, s. 15A:5-4, eff. Oct. 1, 1983.

#### **15A:5-5. Waiver of notice or of lapse of time**

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

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

L.1983, c. 127, s. 15A:5-5, eff. Oct. 1, 1983.

#### **15A:5-6. Action by members without a meeting**

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

b. Except as otherwise provided in the certificate of incorporation or bylaws and subject to the provisions of this subsection, any action required or permitted to be taken at a meeting of members by

this act, the certificate of incorporation, or bylaws, other than the annual or biennial election of trustees, may be taken without a meeting upon the written consent of members who would have been entitled to cast the minimum number of votes which would be necessary to authorize the action at a meeting at which all members entitled to vote thereon were present and voting, if (1) the corporation provides to all other members advance notification setting forth the proposed action consented to, (2) the proposed action is not consummated before the expiration of 10 days from the giving of the notice and 20 days from the giving of the notice in the case of any action taken pursuant to chapter 10 of this act, and (3) the notice sets forth the existence of such 10-day period.

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

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

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

L.1983, c. 127, s. 15A:5-6, eff. Oct. 1, 1983.

#### **15A:5-7. Fixing record date**

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

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

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

b. If no record date is fixed:

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

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

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

L.1983, c. 127, s. 15A:5-7, eff. Oct. 1, 1983.

#### **15A:5-8. Voting list**

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

(1) Be arranged alphabetically within each class, series, or group of members maintained by the corporation for convenience of reference, with the address of each member;

(2) Be produced at the time and place of the meeting;

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

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

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

L.1983, c. 127, s. 15A:5-8, eff. Oct. 1, 1983.

#### **15A:5-9. Quorum of members**

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

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

L.1983, c. 127, s. 15A:5-9, eff. Oct. 1, 1983.

#### **15A:5-10. Voting by members**

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

L.1983, c. 127, s. 15A:5-10, eff. Oct. 1, 1983.

#### **15A:5-11. Votes required**

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

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

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

L.1983, c. 127, s. 15A:5-11, eff. Oct. 1, 1983.

#### **15A:5-12. Greater or lesser voting requirements**

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

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

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

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

L.1983, c. 127, s. 15A:5-12, eff. Oct. 1, 1983.

### **15A:5-13. Memberships held or controlled by the corporation not voted or counted**

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

L.1983, c. 127, s. 15A:5-13, eff. Oct. 1, 1983.

### **15A:5-14. Memberships held by another corporation**

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

L.1983, c. 127, s. 15A:5-14, eff. Oct. 1, 1983.

### **15A:5-15. Memberships held by fiduciaries**

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

L.1983, c. 127, s. 15A:5-15, eff. Oct. 1, 1983.

### **15A:5-16. Memberships held jointly or as tenants in common**

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

L.1983, c. 127, s. 15A:5-16, eff. Oct. 1, 1983.



### **15A:5-17. Voting of pledged memberships**

A member whose membership interest is pledged shall be entitled to vote the membership until the membership has been transferred into the name of the pledgee, or a nominee of the pledgee.

L.1983, c. 127, s. 15A:5-17, eff. Oct. 1, 1983.

### **15A:5-18. Proxy voting**

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

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

L.1983, c. 127, s. 15A:5-18, eff. Oct. 1, 1983.

### **15A:5-19. Agreements as to voting; provision in certificate of incorporation as to control of trustees**

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

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

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

d. If a provision authorized by subsection b. of this section becomes invalid as provided in subsection



c. of this section, the board, or the person or persons having the management authority otherwise in the board, shall amend the certificate of incorporation to delete the provision by filing a certificate of amendment in the office of the Secretary of State. The certificate shall be executed on behalf of the corporation and shall set forth:

(1) the name of the corporation;

(2) the date of the adoption of the amendment;

(3) the deleted provision; and

(4) the event set forth in subsection c. of this section by reason of which the provision has become invalid.

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

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

L.1983, c. 127, s. 15A:5-19, eff. Oct. 1, 1983.

### **15A:5-20. Elections of trustees; cumulative voting**

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

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

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

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

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

L.1983, c. 127, s. 15A:5-20, eff. Oct. 1, 1983.

#### **15A:5-21. Selection of inspectors**

a. Unless the bylaws otherwise provide, the board may, in advance of a members' meeting, appoint one or more inspectors to act at the meeting or any adjournment thereof.

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

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

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

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

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

L.1983, c. 127, s. 15A:5-21, eff. Oct. 1, 1983.

#### **15A:5-22. Duties of inspectors**

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

L.1983, c. 127, s. 15A:5-22, eff. Oct. 1, 1983.

### **15A:5-23. Review of elections by superior court**

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

L.1983, c. 127, s. 15A:5-23, eff. Oct. 1, 1983.

### **15A:5-24. Books and records; right of inspection**

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

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

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

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

L.1983, c. 127, s. 15A:5-24, eff. Oct. 1, 1983.

### **15A:5-25. Liabilities of members**

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

b. A member shall be liable to the corporation only to the extent of any unpaid portion of membership dues or assessments which the corporation may have lawfully imposed, or for any other indebtedness owed by the member to the corporation. No action shall be brought by any creditor of the corporation to reach and apply any liability to any debt of the corporation until after final judgment shall have been rendered against the corporation in favor of the creditor and execution thereon returned unsatisfied, or the

corporation shall have been adjudged bankrupt, or a receiver shall have been appointed with power to collect debts, and the receiver, on demand of a creditor to bring an action thereon, has refused to sue for the unpaid amount, or the corporation shall have been dissolved or ceased its activities leaving debts unpaid. No such action shall be brought more than 3 years after the happening of any one of the events.

L.1983, c. 127, s. 15A:5-25, eff. Oct. 1, 1983.

### **15A:6-1. Board of trustees**

The activities of a corporation shall be managed by its board, except as in this act or in its certificate of incorporation otherwise provided. Trustees shall be at least 18 years of age and need not be United States citizens or residents of this State or members of the corporation unless the certificate of incorporation or bylaws so require. The certificate of incorporation or bylaws may prescribe other qualifications for trustees.

L.1983, c. 127, s. 15A:6-1, eff. Oct. 1, 1983.

### **15A:6-2. Number of trustees**

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

L.1983, c. 127, s. 15A:6-2, eff. Oct. 1, 1983.

### **15A:6-3. Term of trustees**

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

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

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

elected and qualified and until a successor is elected and qualified.

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

L.1983, c. 127, s. 15A:6-3, eff. Oct. 1, 1983.

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

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

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

L.1983, c. 127, s. 15A:6-4, eff. Oct. 1, 1983.

#### **15A:6-5. Vacancies and newly created trusteeships**

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

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

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

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

L.1983, c. 127, s. 15A:6-5, eff. Oct. 1, 1983.

### **15A:6-6. Removal of trustees**

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

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

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

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

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

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

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

L.1983, c. 127, s. 15A:6-6, eff. Oct. 1, 1983.

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

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

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

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

L.1983, c. 127, s. 15A:6-7, eff. Oct. 1, 1983.

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

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

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

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

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

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

L.1983, c. 127, s. 15A:6-8, eff. Oct. 1, 1983.

#### **15A:6-9. Executive committee; other committees**

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

(1) Make, alter or repeal any bylaw of the corporation;



(2) Elect or appoint any trustee, or remove any officer or trustee;

(3) Submit to members any action that requires members' approval; or

(4) Amend or repeal any resolution previously adopted by the board.

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

(1) Fill any vacancy in any committee;

(2) Appoint one or more trustees to serve as alternate members of any committee, to act in the absence or disability of members of any committee with all the powers of the absent or disabled members;

(3) Abolish any committee at its pleasure; and

(4) Remove any trustee from membership on a committee at any time, with or without cause.

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

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

L.1983, c. 127, s. 15A:6-9, eff. Oct. 1, 1983.

#### **15A:6-10. Place and notice of trustees' meetings**

a. Meetings of the board may be held either within or without this State, unless otherwise provided by the certificate of incorporation or the bylaws.

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

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

L.1983, c. 127, s. 15A:6-10, eff. Oct. 1, 1983.



### **15A:6-11. Loans to officers or employees**

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

L.1983, c. 127, s. 15A:6-11, eff. Oct. 1, 1983.

### **15A:6-12. Liability of trustees in certain cases**

a. In addition to any other liabilities imposed by law upon trustees of a corporation, trustees who vote for, or concur in, any of the following corporate actions:

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

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

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

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

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

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

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

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

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

L.1983, c. 127, s. 15A:6-12, eff. Oct. 1, 1983.

### **15A:6-13. Liability of trustees; presumption of assent to action taken at a meeting**

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

L.1983, c. 127, s. 15A:6-13, eff. Oct. 1, 1983.

### **15A:6-14. Standard of care; liability of trustees; reliance on corporate records**

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

L.1983, c.127, s.15A:6-14, eff. Oct. 1, 1983; amended 1989,c.260,s.3.

### **15A:6-15. Officers**

a. The officers of a corporation shall consist of a president, a secretary, a treasurer, and, if desired, a chairman of the board, an executive director, one or more vice presidents, and all other officers as may be prescribed by the bylaws. Unless otherwise provided in the bylaws, the officers shall be elected or appointed by the board. A corporation may provide alternative titles for those officers; provided that the

certificate of incorporation or the bylaws specify which other officer titles correspond to the president, secretary and treasurer and that the alternative titles not be used in completing the annual report filed pursuant to section 15A:4-5.

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

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

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

L.1983, c. 127, s. 15A:6-15, eff. Oct. 1, 1983.

#### **15A:6-16. Removal and resignation of officers; filling of vacancies**

a. Any officer elected or appointed by the board may be removed by the board with or without cause. An officer elected by the members may be removed, with or without cause, only by vote of the members, but the authority to act as an officer may be suspended by the board for cause. The removal of an officer without cause shall be without prejudice to that officer's contract rights, if any. Election or appointment of an officer shall not of itself create contract rights.

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

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

L.1983, c. 127, s. 15A:6-16, eff. Oct. 1, 1983.

#### **15A:6-17. Bonds; facsimile signatures and seals**

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

L.1983, c. 127, s. 15A:6-17, eff. Oct. 1, 1983.

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

a. Memberships in a corporation may be, but need not be, represented by certificates or other written evidence of membership. Unless the certificate of incorporation or bylaws otherwise provide, the certificates or written evidences shall be signed by, or in the name of the corporation by, the chairman of

the board, or the president or a vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the corporation and may be sealed with the seal of the corporation or a facsimile thereof.

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

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

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

L.1983, c. 127, s. 15A:7-1, eff. Oct. 1, 1983.

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

a. Memberships of a corporation shall be personal property and, unless otherwise provided in the certificate of incorporation or bylaws, are not transferable and terminate upon the death of the member.

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

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

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

(2) Obligates the corporation to purchase the membership;

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

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

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

court the findings and recommendations as to fair value.

L.1983, c. 127, s. 15A:7-2, eff. Oct. 1, 1983.

### **15A:8-1. Employee benefit plans**

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

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

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

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

L.1983, c. 127, s. 15A:8-1, eff. Oct. 1, 1983.

### **15A:8-2. Formulation of plans**

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

L.1983, c. 127, s. 15A:8-2, eff. Oct. 1, 1983.

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

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

L.1983, c. 127, s. 15A:8-3, eff. Oct. 1, 1983.

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

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

L.1983, c. 127, s. 15A:8-4, eff. Oct. 1, 1983.

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

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

L.1983, c. 127, s. 15A:8-5, eff. Oct. 1, 1983.

### **15A:9-1. Amendment of certificate of incorporation**

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

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

- (1) To change its corporate name;
- (2) To enlarge, limit or otherwise change its corporate purposes or powers;
- (3) To provide for expansion or limitation on eligibility requirements for membership;
- (4) To increase or decrease the number of trustees or their powers;
- (5) To create new classes of members, to divide any class of members into one or more classes of members, and to transfer members from one class to another;
- (6) To become a corporation with members or without members;
- (7) To extend its period of duration; or
- (8) To strike out, change or add any provision not inconsistent with law for the management and conduct of the affairs of the corporation, or creating, defining, limiting and regulating the powers of the corporation, its trustees and members or any class of members, including any provision which under this act is required or permitted to be set forth in the bylaws.

L.1983, c. 127, s. 15A:9-1, eff. Oct. 1, 1983.

### **15A:9-2. Procedure to amend certificate of incorporation**

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

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

c. An amendment of the certificate of incorporation of a corporation not having any members entitled to vote thereon shall be approved upon receipt of the affirmative vote of two-thirds of those trustees

present at a meeting called for the purpose of considering and voting upon the proposed amendment unless the vote of a greater number is required by the certificate of incorporation or bylaws. Upon adoption, a certificate of amendment shall be filed in the office of the Secretary of State as provided in section 15A:9-4.

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

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

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

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

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

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

L.1983, c. 127, s. 15A:9-2, eff. Oct. 1, 1983.

### **15A:9-3. Class voting on amendments**

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

L.1983, c. 127, s. 15A:9-3, eff. Oct. 1, 1983.

### **15A:9-4. Certificate of amendment**

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

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

(1) the name of the corporation;

(2) the amendment so adopted;



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

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

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

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

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

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

L.1983, c. 127, s. 15A:9-4, eff. Oct. 1, 1983.

#### **15A:9-5. Restated certificate of incorporation**

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

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

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

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

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

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

(3) If pursuant to subsection f. of this section, the restated certificate is to become effective subsequent



to the time of its filing, it shall state the date when it is to become effective.

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

(1) The name of the corporation;

(2) Whether the corporation has or does not have members;

(3) If the restated certificate was adopted by the board and no amendment to the certificate of incorporation is made thereby, the date of adoption by the board;

(4) If the restated certificate was adopted by the board and an amendment to the certificate of incorporation is made by the restated certificate, the date of adoption by the board and either the number of trustees of the corporation, the number of trustees voting for and against the restated certificate, respectively, and the number of trustees present at the meeting; or that the amendment was adopted by the unanimous written consent of the trustees without a meeting; or

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

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

L.1983, c. 127, s. 15A:9-5, eff. Oct. 1, 1983.

#### **15A:9-6. Abandonment of amendment or restated certificate**

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

of adoption of the resolution. The Secretary of State shall forward the copy to the Attorney General.

L.1983, c. 127, s. 15A:9-6, eff. Oct. 1, 1983.

#### **15A:10-1. Procedure for merger**

a. Any two or more domestic corporations may merge into one of the corporations pursuant to a plan of merger approved in the manner provided in this act.

b. The board of each corporation shall approve a plan of merger setting forth:

(1) the names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;

(2) the terms and conditions of the proposed merger, including a statement of any amendments in the certificate of incorporation of the surviving corporation to be affected by the merger;

(3) the manner and basis of converting the membership of each corporation, in whole or in part, into memberships or obligations of the surviving corporation, or into cash or other property;

(4) Any other provisions with respect to the proposed merger as are deemed necessary or desirable.

L.1983, c. 127, s. 15A:10-1, eff. Oct. 1, 1983.

#### **15A:10-2. Procedure for consolidation**

a. Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this act.

b. The board of each corporation shall approve a plan of consolidation setting forth:

(1) the names of corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(2) the terms and conditions of the proposed consolidation;

(3) the manner and basis of converting the memberships of each corporation, in whole or in part, into memberships or obligations of the new corporation or into cash or other property;

(4) with respect to the new corporation, all of the statements required to be set forth in the certificate of incorporation for corporations organized under this act, except that it shall not be necessary to set forth the name and address of each incorporator; and

(5) any other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

L.1983, c. 127, s. 15A:10-2, eff. Oct. 1, 1983.

### **15A:10-3. Approval by corporation not having members entitled to vote**

When a corporation is without members entitled to vote thereon, a merger or consolidation shall be approved upon receipt of the affirmative vote of two-thirds of the trustees present at a meeting called for the purpose of considering and voting upon the proposed merger or consolidation, unless a greater number is fixed by the certificate of incorporation or the bylaws.

L.1983, c. 127, s. 15A:10-3, eff. Oct. 1, 1983.

### **15A:10-4. Approval by members**

a. Where a corporation has members entitled to vote thereon, the board shall approve the plan of merger or plan of consolidation and direct that the plan be submitted to a vote at a meeting of members. Written notice shall be given not less than 20 nor more than 60 days before the meeting to each member of record entitled to vote at that meeting, in the manner provided in this act for the giving of notice of meetings of members. The notice shall include, or shall be accompanied by, a copy or a summary of the plan of merger or consolidation.

b. At the meeting, a vote of the members entitled to vote shall be taken on the proposed plan of merger or consolidation. The plan shall be approved upon receiving the affirmative vote of two-thirds of the votes cast by the members entitled to vote thereon, and, in addition, if any class is entitled to vote thereon as a class, the affirmative vote of two-thirds of the votes cast in each class vote. Any class of members of any corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to the certificate of incorporation, would entitle the class of members to vote as a class, unless the provision is one which could be adopted by the board without member approval. The voting requirements of this section shall be subject to such greater or lesser requirements as are adopted pursuant to section 15A:5-12.

L.1983, c. 127, s. 15A:10-4, eff. Oct. 1, 1983.

### **15A:10-5. Certificate of merger or consolidation**

a. After approval of the plan of merger or consolidation, a certificate of merger or a certificate of consolidation shall be executed on behalf of each corporation. The certificate shall set forth:

(1) the name of each corporation which is a party to the merger or consolidation and, with respect to each, whether or not it has members entitled to vote on the merger or consolidation;

(2) the plan of merger or the plan of consolidation;

(3) as to each corporation without members entitled to vote thereon:

(a) that the plan of merger or plan of consolidation was approved by the board of trustees of the corporation, and

(b) the number of trustees and either the number of votes cast for and against the plan of merger or plan of consolidation and the number of trustees present at the meeting or that the plan of merger or plan of consolidation was adopted by the unanimous written consent of the trustees without a meeting;

(4) as to each corporation having members entitled to vote thereon:

(a) the number of members entitled to vote on such plan,

(b) if the members of any class are entitled to vote thereon as a class, the designation and number of members entitled to vote thereon of each class,

(c) either the number of votes for and against such plan, respectively, if the members of any class are entitled to vote as a class, the number of votes of each class voted for and against such plan, respectively, and the number of members present at the meeting or that the plan of merger or plan of consolidation was adopted by the unanimous written consent of the members without a meeting;

(5) if, pursuant to subsection b. of this section, the merger is to become effective at a time subsequent to the date of filing with the Secretary of State, the date when the merger is to become effective.

b. The executed original and a copy of the certificate shall be filed in the office of the Secretary of State and the merger or consolidation shall become effective upon the date of the filing or at a later time, not to exceed 30 days after the date of filing, as may be set forth in the certificate. The Secretary of State shall forward the copy to the Attorney General.

L.1983, c. 127, s. 15A:10-5, eff. Oct. 1, 1983.

#### **15A:10-6. Effect of merger or consolidation**

When a merger or consolidation has become effective:

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

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

c. The surviving or new corporation shall, to the extent consistent with its certificate of incorporation as amended or established by the merger or consolidation, possess all the rights, privileges, prerogatives, powers, immunities, purposes and franchises, both public and private, of each of the merging or consolidating corporations;

d. All real property and personal property, tangible and intangible, of every kind and description, belonging to each of the corporations so merged or consolidated shall be vested in the surviving or new corporation without further act or deed, and the title to any real estate or any interest therein, vested in any of the corporations shall not revert or be in any way impaired by reason of the merger or consolidation, but the real and personal property shall be and remain subject to any trusts on which it may have been theretofore held;

e. The surviving or new corporation shall assume, carry and discharge and shall be liable for all the obligations and liabilities of each of the corporations so merged or consolidated, and any claim existing or action or proceeding pending by or against any of the corporations may be enforced as if the merger or consolidation had not taken place, and neither the rights of creditors nor any liens upon, or security interests in, the property of any of the corporations shall be impaired by the merger or consolidation;

f. In the case of a merger, the certificate of incorporation of the surviving corporation shall, without

further act or deed, be amended to the extent, if any, stated in the plan of merger, and, in the case of a consolidation, the statements set forth in the certificate of consolidation and which are required or permitted to be set forth in the certificate of incorporation of corporations organized under this act shall be the certificate of incorporation of the new corporation;

g. The corporate entity of each corporation combined by merger or consolidation shall be continued for the sole purpose of enabling it to receive any devise made for its benefit and intended for its use and purposes as if the merger or consolidation had not been effected; the trustees of the surviving corporation or the new corporation shall for this purpose be deemed the trustees of each corporation merged or consolidated, and upon the receipt of the devise or the proceeds thereof, title to the property shall vest in the surviving or new corporation subject to any trust or other condition imposed in relation thereto.

L.1983, c. 127, s. 15A:10-6, eff. Oct. 1, 1983.

### **15A:10-7. Merger or consolidation of domestic and foreign corporations**

a. One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner:

(1) Each domestic corporation shall comply with the provisions of this act with respect to the merger or consolidation of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the jurisdiction under which it is organized;

(2) The certificate of merger or consolidation required by section 15A:10-5 shall be executed on behalf of each domestic corporation and each foreign corporation and, in addition to the information required by subsection a. of section 15A:10-5, shall set forth that the applicable provisions of the laws of the jurisdiction under which each foreign corporation was organized have been, or upon compliance with filing and recording requirements will have been, complied with;

(3) If the surviving or new corporation is to be a foreign corporation and is to conduct activities in this State, it shall comply with the provisions of this act with respect to foreign corporations, and, whether or not it is to conduct activities in this State, the certificate of merger or consolidation required by section 15A:10-5 shall, in addition to other required information, set forth:

(a) an agreement by the foreign corporation that it may be served with process in this State in any proceeding for the enforcement of any obligation of any domestic corporation or any foreign corporation, previously amenable to suit in this State, which is a party to the merger or consolidation, and

(b) an irrevocable appointment by the foreign corporation of the Secretary of State of this State as its agent to accept service of process in any proceeding, and the post office address, within or without this State, to which the Secretary of State shall mail a copy of the process in the proceeding.

b. If the surviving or new corporation is a domestic corporation, the effect of the merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations. If the surviving or new corporation is a foreign corporation, the effect of the merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except as the laws of the jurisdiction of incorporation of the foreign corporation shall provide otherwise.

L.1983, c. 127, s. 15A:10-7, eff. Oct. 1, 1983.

### **15A:10-8. Abandonment of merger or consolidation**

Prior to the time when a merger or consolidation authorized by this chapter shall become effective, the merger or consolidation may be abandoned pursuant to provisions therefore, if any, set forth in the plan of merger or consolidation. If a certificate of merger or consolidation has been filed in the office of the Secretary of State prior to the abandonment, an original and a copy of a certificate of abandonment shall be filed in the office of the Secretary of State. The certificate shall be executed on behalf of each corporation which is a party to the plan of merger or consolidation, unless the plan permits abandonment by less than all of the corporations, in which event the certificate may be executed on behalf of the corporation or corporations exercising the right to abandon. The certificate shall state that the merger or consolidation has been abandoned in accordance with the provisions therefore set forth in the plan of merger or consolidation. The Secretary of State shall forward the copy to the Attorney General.

L.1983, c. 127, s. 15A:10-8, eff. Oct. 1, 1983.

### **15A:10-9. Acquisition of shares or assets**

Nothing contained in this chapter shall limit the right of any corporation to acquire all or some of the shares or the assets of another domestic corporation, foreign corporation or corporate entity. The certificate of incorporation or bylaws may contain provisions which restrict or limit a corporation as to the acquisition of shares or assets.

L.1983, c. 127, s. 15A:10-9, eff. Oct. 1, 1983.

### **15A:10-10. Sale or other disposition of assets in regular course of activities and mortgage or pledge of assets**

The sale, lease, exchange, or other disposition of all, or substantially all, the assets of a corporation in the usual and regular course of its activities as conducted by the corporation, and the mortgage or pledge of any or all the assets of a corporation whether or not in the usual and regular course of activities as conducted by the corporation, may be made upon terms and conditions and for a consideration, which may consist in whole or in part of money or property, real or personal, including shares, bonds or other securities of any domestic corporation, foreign corporation, or any corporate business entity as shall be authorized by its board. Unless otherwise provided in the certificate of incorporation or bylaws, no approval of the members shall be required.

L.1983, c. 127, s. 15A:10-10, eff. Oct. 1, 1983.

### **15A:10-11. Sale or other disposition of assets other than in regular course of activities**

a. A sale, lease, exchange, or other disposition of all, or substantially all, the assets of a corporation, if not in the usual and regular course of its activities as conducted by the corporation, may be made upon terms and conditions and for a consideration, which may consist in whole or in part of money or property, real or personal, including shares, bonds or other securities of any corporation, domestic or foreign, or any corporate business entity as may be authorized in the following manner:

(1) If the corporation is without members entitled to vote thereon, the board shall adopt a resolution authorizing the sale, lease, exchange, or other disposition by a vote of not less than two-thirds of the trustees present.

(2) If the corporation has members entitled to vote thereon:

(a) The board shall recommend such sale, lease, exchange, or other disposition and direct that it be submitted to a vote at a meeting of members;

(b) Written notice shall be given not less than 20 nor more than 60 days before the meeting to each member of record, whether or not entitled to vote at the meeting, in the manner provided in this act for the giving of notice of meetings of members, and the notice shall include, or shall be accompanied by a statement summarizing the principal terms of the proposed transaction;

(c) At the meeting the members may approve the sale, lease, exchange, or other disposition and may fix, or may authorize the board to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefore; the sale, lease, exchange or other disposition shall be approved upon receiving the affirmative vote of two-thirds of the votes cast by the members entitled to vote thereon, and, if any class of shares is entitled to vote thereon as a class, the affirmative vote of two-thirds of the votes cast in each class vote; and the voting requirement of this paragraph shall be subject to such greater or lesser requirements as are adopted pursuant to section 15A:5-12.

b. Notwithstanding the approval or authorization by the members, the board may abandon the sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action by the members.

c. The sale, lease, exchange, or other disposition of all, or substantially all, the assets of one or more subsidiaries of a corporation, if not in the usual and regular course of activities as conducted by the subsidiary or subsidiaries, shall be treated as a disposition within the meaning of subsection a. of this section if the subsidiary or subsidiaries constitute all, or substantially all, the assets of the corporation.

L.1983, c. 127, s. 15A:10-11, eff. Oct. 1, 1983.

### **15A:11-1. Limitations on rights of dissenting members**

A member of a domestic corporation shall not have the right to dissent from any merger, consolidation, sale of assets, or amendment of the certificate of incorporation or bylaws, nor shall any member have the right to be paid the value of any membership held by the member of a domestic corporation effecting any transaction. The transaction shall not be enjoined, preliminarily or permanently, except upon a showing that the transaction is fraudulent or is fundamentally unfair to any member and, in the action, the member or members complaining thereof shall have the burden of showing fraud or fundamental unfairness.

L.1983, c. 127, s. 15A:11-1, eff. Oct. 1, 1983.

### **15A:12-1. Methods of dissolution**

a. A corporation may be dissolved in any one of the following ways:

(1) by action of the incorporators or trustees pursuant to section 15A:12-2;

(2) by action of the members pursuant to section 15A:12-3;

(3) by action of the board and the members pursuant to section 15A:12-4;



(4) by action of the board pursuant to section 15A:12-5;

(5) by action of the members pursuant to section 15A:12-6;

(6) by the filing of a certificate of dissolution pursuant to section 15A:12-7 upon expiration of any period of duration stated in the corporation's certificate of incorporation;

(7) by a judgment of the Superior Court in an action brought pursuant to section 15A:12-11, 15A:12-12, or 15A:14-2 or otherwise; or

(8) automatically by the Secretary of State revoking a certificate of incorporation as set forth in subsection c. of section 15A:4-5.

b. A corporation which has been dissolved in a proceeding pursuant to section 15A:12-11 or 15A:12-12, or which has been dissolved, or the certificate of incorporation of which has been revoked, for a cause or by a method not mentioned in this section, shall be subject to all the provisions of this chapter and of chapter 14, to the extent that those provisions are compatible with a court-directed dissolution, or with the statute or common law proceeding pursuant to which the dissolution, or revocation is effected.

L.1983, c. 127, s. 15A:12-1, eff. Oct. 1, 1983.

#### **15A:12-2. Dissolution before commencing activities**

a. A corporation may be dissolved by action of its incorporators when there has been no organization meeting of the board, or by the board if there has been an organization meeting, if the corporation:

(1) has not commenced activities;

(2) has no debts or other liabilities; and

(3) has no assets or if it had assets, has distributed them according to a plan pursuant to section 15:12-8 less any part of the assets disbursed for expenses.

b. The dissolution of a corporation shall be effected when a majority of the incorporators or trustees execute and file in the office of the Secretary of State an original and a copy of a certificate of dissolution stating:

(1) the name of the corporation;

(2) the name of the registered agent of the corporation;

(3) the location of the registered office of the corporation;

(4) the names of the incorporators and trustees constituting the first board;

(5) that the corporation has not commenced activities and has no debts or other liabilities;

(6) that the corporation has no assets or if it had assets, has distributed them according to a plan pursuant to section 15A:12-8, less any part of the assets disbursed for expenses; and



(7) that a majority of the incorporators or trustees has elected that the corporation be dissolved.

c. The Secretary of State shall accept for filing a certificate of dissolution pursuant to the provisions of this section without payment of a filing fee and shall make the name of the corporation available immediately for corporate use upon the filing of a certificate of dissolution pursuant to the provisions of this section. The Secretary of State shall forward the copy to the Attorney General.

L.1983, c. 127, s. 15A:12-2, eff. Oct. 1, 1983.

### **15A:12-3. Dissolution without a meeting of members**

A corporation may be dissolved by the written consent of all its members entitled to vote thereon. To effect the dissolution, the members shall adopt a plan of dissolution pursuant to section 15A:12-8 and shall execute and file in the office of the Secretary of State an original and a copy of a certificate of dissolution which shall contain the information required by section 15A:12-10. The Secretary of State shall forward the copy to the Attorney General.

L.1983, c. 127, s. 15A:12-3, eff. Oct. 1, 1983.

### **15A:12-4. Dissolution pursuant to action of board and members**

a. A corporation which has members entitled to vote on its dissolution may be dissolved by action of its board and its members as provided in this section.

b. The board shall recommend that the corporation be dissolved, adopt a plan of dissolution pursuant to section 15A:12-8, and direct that the plan of dissolution be submitted to a vote at a meeting of members.

c. Notice of the meeting shall be given to each member entitled to vote at the meeting within the time and in the manner provided in this act for the giving of notice of meetings of members.

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

L.1983, c. 127, s. 15A:12-4, eff. Oct. 1, 1983.

### **15A:12-5. Dissolution pursuant to action of board**

If there are no members of the corporation entitled to vote on the dissolution of the corporation, a corporation may be dissolved by the affirmative vote of two-thirds of its trustees at a meeting of the board. If dissolution is approved as provided in this section, a certificate of dissolution shall be executed on behalf of the corporation and an original and a copy shall be filed in the office of the Secretary of State. The certificate shall contain the information required by section 15A:12-10. The Secretary of State shall forward the copy to the Attorney General.

L.1983, c. 127, s. 15A:12-5, eff. Oct. 1, 1983.

### **15A:12-6. Dissolution pursuant to provision in certificate of incorporation**

a. The certificate of incorporation may provide that any member, any trustee, or any specified number of members or trustees or any class of members may effect the dissolution of the corporation at will or upon the occurrence of a specified event. The provision shall specify the procedures for adopting a plan of dissolution. The dissolution of the corporation may be effected by adopting a plan of dissolution pursuant to section 15A:12-8 and by filing an original and a copy of a certificate of dissolution in the office of the Secretary of State, executed as the certificate of incorporation may provide. The certificate of dissolution shall contain the information required by section 15A:12-10. The Secretary of State shall forward the copy to the Attorney General.

b. An amendment of the certificate of incorporation which adds, amends, or deletes a provision authorized by subsection a. of this section, shall be authorized at a meeting of members by a vote of all the members, or by a lesser vote, but not less than the vote set forth in paragraph 3 of subsection d. of section 15A:9-2, as may be specifically provided for in the certificate of incorporation for such amendment.

c. If the corporation has no members entitled to vote on a dissolution of the corporation, the certificate of incorporation may provide that any trustee or any specified number of trustees may effect the dissolution of the corporation at will or upon the occurrence of a specified event. The provision shall specify the procedures for adopting a plan of dissolution. The dissolution of the corporation may be effected by adopting a plan of dissolution pursuant to section 15A:12-8 and by filing an original and a copy of a certificate of dissolution in the office of the Secretary of State, executed as the certificate of incorporation may provide. The certificate of dissolution shall contain the information required by section 15A:12-10. The Secretary of State shall forward the copy to the Attorney General.

d. An amendment of the certificate of incorporation which adds, amends, or deletes a provision authorized by subsection c. of this section, shall be authorized at a meeting of the trustees by a vote of all the trustees, or by a lesser vote not below two-thirds, as may be specifically provided for in the certificate of incorporation for such an amendment.

L.1983, c. 127, s. 15A:12-6, eff. Oct. 1, 1983.

### **15A:12-7. Dissolution upon expiration of period of duration**

A corporation shall not be dissolved when the period of duration stated in its certificate of incorporation expires until a plan of dissolution pursuant to subsection a. of section 15A:12-8 has been adopted and an original and a copy of a certificate of dissolution containing the information required by section 15A:12-10 executed on behalf of the corporation has been filed in the office of the Secretary of State. Upon written demand to the corporation by any trustee or member, a corporation whose duration has expired shall, within 60 days of the demand, file an original and a copy of a certificate of dissolution in the office of the Secretary of State unless within that time it amends its certificate of incorporation to extend its duration, as provided in paragraph (2) of subsection b. of section 15A:9-1. The Secretary of State shall forward the copy to the Attorney General.

L.1983, c. 127, s. 15A:12-7, eff. Oct. 1, 1983.

### **15A:12-8. Plan of dissolution and disposition of assets**

a. Every corporation which dissolves pursuant to section 15A:12-2, 15A:12-3, 15A:12-4, 15A:12-5, 15A:12-6 or 15A:12-7 shall adopt a plan of dissolution for the satisfaction of its liabilities and the distribution of its assets. The plan shall implement all provisions in the certificate of incorporation or bylaws prescribing the disposition of assets.

b. The plan shall include, where appropriate, provisions to implement the following in the priority set forth below:

(1) Payment and discharge of all liabilities and obligations of the corporation;

(2) Compliance with all conditions of any tax exemption applicable to the corporation;

(3) Return, transfer or conveyance of all assets received and held by the corporation upon condition that the assets be returned, transferred or conveyed upon dissolution of the corporation;

(4) Transfer or conveyance of all assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon condition set forth in paragraph (3) of subsection b. of this section, to one or more domestic or foreign corporations engaged in activities substantially similar to those of the dissolving corporation or, if applicable, to a receiver to be held for the benefit of the public and for use in accordance with the limitations, or pursuant to a court order;

(5) Distribution of all assets required by the corporation's certificate of incorporation or bylaws to be distributed to the members in the manner so specified;

(6) Disposition of all other assets.

c. If the corporation has no disposable assets at the time of dissolution, the plan of dissolution shall include a statement to that effect.

L.1983, c. 127, s. 15A:12-8, eff. Oct. 1, 1983.

### **15A:12-9. Disposition of unclaimed assets**

Any assets required to be distributed to any person who is unknown or cannot be found, or who is under a disability and for whom there is no legal representative, shall be paid into the Superior Court to be held for the benefit of the owners, subject to the order of the court.

L.1983, c. 127, s. 15A:12-9, eff. Oct. 1, 1983.

### **15A:12-10. Certificate of dissolution; contents; approval**

Upon authorization of dissolution in the manner specified in this chapter, a certificate of dissolution shall be executed and an original and a copy of the certificate shall be filed in the office of the Secretary of State in accordance with the section of this act pursuant to which the dissolution is authorized. The Secretary of State shall forward the copy to the Attorney General. The certificate of dissolution shall set forth:

a. The name of the corporation;

- b. The name of the registered agent of the corporation;
- c. The location of the registered office of the corporation;
- d. The name and address of each of its officers and trustees, which addresses shall be either the residence address of such person or other address where that person regularly receives mail and which is not the address of the corporation;
- e. The plan of dissolution;
- f. That the corporation elects to dissolve;
- g. The manner in which the dissolution was authorized;
- h. A statement that the liabilities of the corporation have been discharged, or that adequate provision has been made therefore, or that the assets of the corporation are not sufficient to discharge its liabilities, and that all the assets of the corporation have been fairly applied, to the extent possible, to pay the liabilities;
- i. If the dissolution is effected by the written consent of all its members pursuant to section 15A:12-3 or of all its trustees pursuant to section 15A:12-5, that the certificate has been signed in person or by proxy by all the members entitled to vote thereon or by all the trustees of the corporation;
- j. If the dissolution is effected pursuant to section 15A:12-4, the text of the board resolution authorizing dissolution, the date and place of the meeting of members called to vote upon the dissolution, the total number of members entitled to vote on the dissolution and the number of members present at the meeting, the number of votes voted for and voted against the dissolution and, where applicable, the number of votes in each class voted for and voted against the dissolution;
- k. If the dissolution is effected pursuant to section 15A:12-6, that the dissolution is effected pursuant to a provision of the certificate of incorporation and that the certificate is executed and filed by the person or persons authorized by the certificate of incorporation;
- l. If the dissolution is effected pursuant to section 15A:12-7, the fact that the corporation is dissolved because of expiration of the period of duration stated in its certificate of incorporation or bylaws; and
- m. A statement that the plan of dissolution and the distribution of assets has been approved by a judge of the Superior Court or by a governmental body or officer if such approval is required.

L.1983, c. 127, s. 15A:12-10, eff. Oct. 1, 1983.

### **15A:12-11. Dissolution in action brought by the Attorney General**

15A:12-11. Dissolution in Action Brought by the Attorney General.

a. The Attorney General may bring an action in the Superior Court for the dissolution of a corporation upon the ground that the corporation:

(1) Has procured its organization through fraudulent misrepresentation or concealment of a material fact;

(2) Has had its certificate of incorporation revoked under subsection c. of section 15A:4-5 (failure to file its annual report);

(3) Has conducted activities after the period of duration specified in its certificate of incorporation and has neither amended its certificate of incorporation to extend the period nor proceeded to liquidate and cease activities;

(4) Has repeatedly exceeded the authority conferred upon it by law;

(5) Has repeatedly conducted its business in an unlawful manner;

(6) Has misused or improperly failed to use its powers, privileges or franchises;

(7) Is insolvent;

(8) Has suspended its ordinary activities for lack of funds;

(9) Is conducting its activities in violation of its certificate of incorporation or, with respect to specific assets, in violation of any terms, conditions, or restrictions applicable to those assets imposed upon it;

(10) Is conducting its activities at a great loss and with great prejudice to the interests of its creditors or members; or

(11) Is conducting activities in a manner which is prejudicial to the public.

b. The Superior Court may proceed in the action in a summary manner or otherwise. Upon a showing by clear and convincing evidence of any cause set forth in subsection a. of this section, the court may declare the corporation dissolved and a copy of the order of the court may be filed in the office of the Secretary of State as evidence thereof.

c. The enumeration in subsection a. of this section of grounds for dissolution shall not exclude any other statutory or common law action by the Attorney General for the dissolution of a corporation or the revocation or forfeiture of its corporate franchises.

L.1983, c.127, s.15A:12-11, eff. Oct. 1, 1983; amended 1997, c.139, s.4.

### **15A:12-12. Involuntary dissolution; other remedies**

a. The Superior Court, in an action brought under this section, may appoint a custodian, appoint a provisional trustee, order a sale of the corporation's assets as provided below, or enter a judgment dissolving the corporation, upon proof that:

(1) The members of the corporation are so divided in voting power that, for a period which includes the time when two consecutive annual or biennial meetings were or should have been held they have failed to elect successors to trustees whose terms have expired or would have expired upon the election and qualification of their successors; or

(2) The trustees of the corporation, or the person or persons having the management authority (if a provision in the corporation's certificate of incorporation contemplated by subsection b. of section 15A:5-

19 is in effect) are unable to effect action on one or more substantial matters respecting the management of the corporation's affairs; or

(3) There is internal dissension and two or more factions of members are so divided that dissolution would be beneficial to the members; or

(4) The trustees or members in control of the corporation have looted or wasted corporate assets, have perpetuated the corporation solely for their personal benefit, or have otherwise acted in an illegal, oppressive or fraudulent manner; or

(5) The corporation is no longer able to carry out its purposes.

b. An action may be brought under this section by one or more trustees or by one or more members. In the action, in the case of appointment of a custodian or a provisional trustee, the court may proceed in summary manner or otherwise.

c. One or more provisional trustees may be appointed if it appears to the court that the appointment may be in the best interests of the corporation and its members, notwithstanding any provisions in the corporation's bylaws, certificate of incorporation, or any resolutions adopted by the board or members. A provisional trustee shall have all the rights and powers of a duly elected trustee of the corporation, including the right to notice of and to vote at meetings of trustees until the time as the provisional trustee shall be removed by order of the court, or unless otherwise ordered by the court, by a vote or written consent of a majority of the votes entitled to be cast by the members entitled to vote to elect trustees or where the corporation has no members, by a vote or written consent of a majority of the votes entitled to be cast by the trustees entitled to elect trustees.

d. A custodian may be appointed if it appears to the court that the appointment may be in the best interests of the corporation and its members, notwithstanding any provisions in the corporation's bylaws, certificate of incorporation, or any resolutions adopted by the members or the board. Subject to any limitations which the court imposes, a custodian shall be entitled to exercise all of the powers of the corporation and its officers to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors, until the time as the custodian shall be removed by order of the court or, unless otherwise ordered by the court, by the vote or written consent of a majority of the votes entitled to be cast by members entitled to vote to elect trustees or where the corporation has no members, by a vote or written consent of a majority of the votes entitled to be cast by the trustees entitled to elect trustees. The powers may be exercised directly or through, or in conjunction with, the corporation's board or officers, in the discretion of the custodian or as the court may order. If so provided in the order appointing the custodian, a custodian shall have the fact-determining powers of a receiver as provided in subsections e. and f. of section 15A:14-5.

e. Any custodian or provisional trustee shall be an impartial person who is neither a member nor a creditor of the corporation or of any subsidiary or affiliate of the corporation.

f. Any custodian or provisional trustee shall report from time to time to the court concerning the matter complained of, or the status of the deadlock, if any, and of the status of the corporation's business, as the court shall direct. In addition, that person shall submit to the court, if so directed, recommendations as to the appropriate disposition of the action. If, after the appointment of a custodian or provisional trustee, the court determines that a judgment of dissolution is in the best interests of the members of the corporation, a judgment shall be entered. The court may continue any custodian or provisional trustee in the office subsequent to the entry of a judgment of dissolution and until the time as the affairs of the corporation are wound up, or it may appoint that person or another as receiver, as provided in section

15A:12-18.

g. In any proceeding under this section, the court shall allow reasonable compensation to the custodian or provisional trustee for services and reimbursement or direct payment of the reasonable costs and expenses, which amounts shall be paid by the corporation.

h. In determining whether to enter a judgment of dissolution in an action brought under this section, the court shall take into consideration whether the corporation is operating in the best interests of its members, but shall not deny entry of a judgment solely on that ground.

i. If the court determines that any party to an action brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including counsel fees incurred in connection with the action, to the injured party or parties.

L.1983, c. 127, s. 15A:12-12, eff. Oct. 1, 1983.

### **15A:12-13. Discontinuance of action or special proceeding**

An action or special proceeding for the dissolution of a corporation may be discontinued at any stage when it is established that the cause for dissolution did not exist or no longer exists. In that event, the court shall dismiss the action or special proceeding and direct any receiver, appointed pursuant to this chapter, or other court appointed officer, to redeliver to the corporation all its remaining property.

L.1983, c. 127, s. 15A:12-13, eff. Oct. 1, 1983.

### **15A:12-14. Effective time of dissolution**

A corporation is dissolved:

a. Upon the proclamation of the Secretary of State issued pursuant to subsection c. of section 15A:4-5;  
or

b. When an original and a copy of a certificate of dissolution is filed in the office of the Secretary of State pursuant to section 15A:12-2, 15A:12-7, or 15A:12-10, except when a later time not to exceed 30 days after the date of filing is specified in the certificate of dissolution; or

c. When a judgment of forfeiture of corporate existence or of dissolution is entered by a court of competent jurisdiction.

L.1983, c. 127, s. 15A:12-14, eff. Oct. 1, 1983.

### **15A:12-15. Effect of dissolution**

a. Except as a court may otherwise direct, a dissolved corporation shall continue its corporate existence but shall not carry on activities except for the purpose of winding up its affairs by:

(1) Collecting its assets;

(2) Fulfilling or discharging its contracts;

(3) Conveying for cash or upon deferred payments, with or without security, those of its assets as are not to be distributed in kind to its members;

(4) Paying, satisfying and discharging its debts and other liabilities; and

(5) Doing all other acts required to liquidate its activities and affairs.

b. Subject to the provisions of subsection a. of this section, and except as otherwise provided by court order, the corporation, its officers, trustees and members shall continue to function for the purpose of winding up the affairs of the corporation in the same manner as if dissolution had not occurred. In particular, and without limiting the generality of the foregoing:

(1) The trustees of the corporation shall not be deemed to be trustees of its assets and shall be held to no greater standard of conduct than that prescribed by section 15A:6-14;

(2) Title to the corporation's assets shall remain in the corporation until transferred by it in the corporate name;

(3) The dissolution shall not change quorum or voting requirements for the board or members, nor shall it alter provisions regarding election, appointment, resignation or removal of, or filling vacancies among, trustees or officers, or provisions regarding amendment or repeal of bylaws or adoption of new bylaws;

(4) Memberships which were transferable prior to the dissolution may thereafter be transferred;

(5) The corporation may sue and be sued in all courts and participate in actions and proceedings, whether judicial, administrative, arbitral or otherwise, in its corporate name, and process may issue by and against the corporation in the same manner as if dissolution had not occurred;

(6) No action brought against any corporation prior to its dissolution shall abate by reason of the dissolution.

c. The dissolution of a corporation shall not affect any remedy available to or against the corporation, its trustees, officers or members, for any right or claim existing or any liability incurred before the dissolution, except as provided in section 15A:12-12 (jurisdiction of Superior Court to supervise dissolution and liquidation) or 15A:12-19 (filing or barring claims).

L.1983, c. 127, s. 15A:12-15, eff. Oct. 1, 1983.

### **15A:12-16. Revocation of dissolution proceedings**

a. Dissolution proceedings commenced pursuant to section 15A:12-3, 15A:12-4, 15A:12-5, 15A:12-6, or 15A:12-7 may be revoked at any time within 60 days after the effective time of dissolution, as determined pursuant to section 15A:12-14, if no disposition of corporate assets has been made and no proceeding pursuant to section 15A:12-21 is pending, by filing in the office of the Secretary of State an original and a copy of a certificate of revocation signed, in person or by proxy, by all of the members or, if there are no members entitled to vote thereon, by all of the trustees, stating that revocation is effective pursuant to subsection a. of this section and that all the members or, if there are no members entitled to vote thereon, all of the trustees of the corporation have signed the certificate, in person or by proxy. In the case of a corporation dissolved pursuant to section 15A:12-7, the certificate must be accompanied by an original and a copy of a certificate of amendment executed by the same persons executing the certificate of revocation containing the information set forth in subsection b. of section 15A:9-4 and



extending the period of duration for a specified or indefinite period of time. The Secretary of State shall forward the copy of the certificate to the Attorney General.

b. In addition to the procedures for revocation of dissolution set forth in subsection a. of this section, corporations having dissolved pursuant to section 15A:12-3, 15A:12-4 or 15A:12-5 may also revoke the dissolution at any time within 60 days after the effective time of dissolution, as determined pursuant to section 15A:12-14, if no disposition of corporate assets has been made and no proceeding pursuant to section 15A:12-21 is pending, in the following manner:

(1) The board of trustees shall call a meeting of members to vote upon the question of revocation of the dissolution proceedings, and in connection with the meeting, the members shall be given the same notice, and the revocation shall be approved by the same vote, as that required by section 15A:12-4 for the approval of dissolution; if there are no members entitled to vote on the revocation, the trustees must approve the revocation at a meeting of the board by the same vote as that required by section 15A:12-5 for the approval of the dissolution;

(2) If the members or trustees approve the revocation, an original and a copy of a certificate of revocation shall be executed on behalf of the corporation and shall be filed in the office of the Secretary of State, and the certificate shall state:

(a) that dissolution is revoked pursuant to subsection b. of section 15A:12-16;

(b) the matters required by subsections a., b., c., and d. of section 15A:12-10;

(c) if the revocation of the dissolution is effected by the written consent of all of its members or all of its trustees, that the certificate has been signed in person or by proxy by all the members entitled to vote thereon or by all of the trustees of the corporation; and

(d) if the revocation of the dissolution is effected by action of its board and its members, the text of the board resolution authorizing revocation, the date and place of the meeting of members called to vote upon the revocation, the total number of members entitled to vote on the revocation, the number of members present at the meeting, the number of votes voted for and voted against the revocation and, where applicable, the number of votes in each class voted for and voted against the revocation.

The Secretary of State shall forward the copy to the Attorney General;

(3) If approval of the dissolution of a corporation is required by a governmental body or officer, and the approval has been given, approval of the revocation of that body or officer must be filed with the certificate of revocation.

L.1983, c. 127, s. 15A:12-16, eff. Oct. 1, 1983.

### **15A:12-17. Effect of revocation of dissolution**

a. Upon the filing of an original and a copy of a certificate of revocation as authorized by this act, the revocation of dissolution proceedings shall become effective, and the corporation may, subject to the provisions of subsection b. of this section, again conduct activities in the same manner as if the dissolution proceedings had never been commenced.

b. If, pursuant to subsection d. of section 15A:2-2, a dissolved corporation has filed a written consent to the adoption of its name or a confusingly similar name by another, the subsequent revocation of

dissolution proceedings pursuant to this section shall not restore the dissolved corporation's right to the use of its name.

L.1983, c. 127, s. 15A:12-17, eff. Oct. 1, 1983.

#### **15A:12-18. Notice to creditors; filing claims**

a. At any time after a corporation has been dissolved, the corporation, or a receiver appointed for the corporation pursuant to this chapter, may give notice requiring all creditors to present their claims in writing. The notice shall be published three times, once in each of 3 consecutive weeks, in a newspaper of general circulation in the county in which the registered office of the corporation is located and shall state that all persons who are creditors of the corporation shall present written proof of their claims to the corporation or the receiver, as the case may be, at a place and on or before a date named in the notice, which date shall not be less than 6 months after the date of the first publication.

b. On or before the date of the first publication of the notice as provided in subsection a. of this section, the corporation, or the receiver, as the case may be, shall mail a copy of the notice to each known creditor of the corporation. The giving of the notice shall not constitute recognition that any person to whom the notice is directed is a creditor of the corporation other than for the purpose of receipt of notice hereunder.

c. As used in this section, "creditor" means all persons to whom the corporation is indebted, and all other persons who have claims or rights against the corporation, whether liquidated or unliquidated, matured or unmatured, direct or indirect, absolute or contingent, secured or unsecured.

d. Proof of the publication and mailing authorized by this section shall be made by an affidavit filed in the office of the Secretary of State.

L.1983, c. 127, s. 15A:12-18, eff. Oct. 1, 1983.

#### **15A:12-19. Barring of claims of creditors**

a. Any creditor as defined in subsection c. of section 15A:12-18 who does not file a claim as provided in the notice given pursuant to section 15A:12-18, and all those claiming through or under that creditor, shall be forever barred from suing on the claim or otherwise realizing upon or enforcing it except, in the case of a creditor who shows good cause for not having previously filed a claim, to the extent as the Superior Court may allow:

(1) Against the corporation to the extent of any undistributed assets; or

(2) If the undistributed assets are not sufficient to satisfy the claim, against a member or other person, corporation or corporate business entity to the extent of the distributee's ratable part of the claim, out of the assets of the corporation distributed to the distributee in liquidation or dissolution.

b. This section shall not apply to claims which are in litigation on the date of the first publication of the notice pursuant to section 15A:12-18.

L.1983, c. 127, s. 15A:12-19, eff. Oct. 1, 1983.

### **15A:12-20. Disposition of rejected claims**

If the corporation, or the receiver of a corporation appointed pursuant to this chapter, rejects in whole or in part any claim filed by a creditor, as defined in subsection c. of section 15A:12-18, the corporation or the receiver, as the case may be, shall mail notice of the rejection to the creditor. If the creditor does not bring suit upon the claim within 60 days from the time the notice was mailed, the creditor and all those claiming through or under that creditor shall, except as otherwise provided in this chapter, be forever barred from suing on the claim or otherwise realizing upon or enforcing it. Proof of the mailing required by this section shall be made by an affidavit filed in the office of the Secretary of State.

L.1983, c. 127, s. 15A:12-20, eff. Oct. 1, 1983.

### **15A:12-21. Jurisdiction of the superior court**

At any time after a corporation has been dissolved in any manner, a creditor, as defined in subsection c. of section 15A:12-18, or a member of the corporation, or, where there are no members, a trustee of the corporation, or the corporation itself, may apply to the Superior Court for a judgment that the affairs of the corporation and the liquidation of its assets continue under the supervision of the court. The court shall have power to proceed in a summary manner or otherwise upon the application, and shall make orders and judgments as may be required including, but not limited to, the continuance of the liquidation of the corporation's assets by its officers and trustees under the supervision of the court, or the appointment of a receiver of the corporation, who shall be vested with all the powers provided in Chapter 14 to be exercised by receivers appointed to liquidate the affairs of a corporation.

L.1983, c. 127, s. 15A:12-21, eff. Oct. 1, 1983.

### **15A:12-22. Judgment of dissolution; filing copy**

A copy of every judgment dissolving a corporation or forfeiting its charter shall be forthwith filed by the clerk of the court in the office of the Secretary of State, and a notation thereof shall be made by the Secretary of State on the charter or certificate of incorporation of the corporation affected. The Secretary of State shall notify the Attorney General of the action.

L.1983, c. 127, s. 15A:12-22, eff. Oct. 1, 1983.

### **15A:12-23. Dissolution upon liquidation**

No corporation shall be completely liquidated and all of its assets distributed unless provision is made for the dissolution of the corporation and the payment of all fees, taxes, and other expenses incidental thereto.

L.1983, c. 127, s. 15A:12-23, eff. Oct. 1, 1983.

### **15A:13-1. Holding and conveying real estate**

A foreign corporation shall have the same powers with respect to real property located in this State, or any interest therein, as a domestic corporation.

L.1983, c. 127, s. 15A:13-1, eff. Oct. 1, 1983.

### **15A:13-2. Application of act to foreign corporations**

a. Foreign corporations which were duly authorized to conduct activities in this State prior to January 1, 1969, and which did not thereafter withdraw from this State and which remain so authorized on the effective date of this act, for a purpose or purposes for which a corporation might secure authority under this act, are deemed to be authorized to conduct activities under this act and shall be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this State under this act; and from the time this act takes effect those corporations shall be subject to all the duties, restrictions, penalties and liabilities prescribed herein for foreign corporations procuring certificates of authority to transact business in this State under this act.

b. A foreign corporation which receives a certificate of authority under this act shall, until a certificate of revocation or of withdrawal is issued as provided in this act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which the certificate of authority is issued; and, except as in this act otherwise provided, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character.

c. A foreign corporation which conducts activities in this State without a certificate of authority under this act shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a foreign corporation procuring a certificate of authority.

L.1983, c. 127, s. 15A:13-2, eff. Oct. 1, 1983.

### **15A:13-3. Admission of foreign corporation**

a. A foreign corporation shall not have the right to conduct activities in this State until it shall have procured a certificate of authority so to do from the Secretary of State. The preceding sentence shall not be operative until 90 days after the effective date of this act. A foreign corporation may be authorized to conduct in this State any activities which may be done lawfully in this State by a domestic corporation, to the extent that it is authorized to conduct those activities in the jurisdiction of its incorporation, but no other activities.

b. Without excluding other activities which may not constitute conducting activities in this State, a foreign corporation shall not be considered to be conducting activities in this State, for the purposes of this act, by reason of carrying on in this State any one or more of the following activities:

(1) Maintaining, defending or otherwise participating in any action or proceeding, whether judicial, administrative, arbitrate or otherwise, or effecting the settlement thereof or the settlement of claims or disputes;

(2) Holding meetings of its trustees or members;

(3) Maintaining bank accounts or borrowing money, with or without security, even if the borrowings are repeated and continuous transactions and even if the security has a situs in this State;

(4) Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositories with relation to its securities.

c. The specification in subsection b. of this section does not establish a standard for activities which

may subject a foreign corporation to service of process or taxation in this State.

L.1983, c. 127, s. 15A:13-3, eff. Oct. 1, 1983.

#### **15A:13-4. Application for certificate of authority**

a. To procure a certificate of authority to conduct activities in this State, a foreign corporation shall file in the office of the Secretary of State an original and a copy of an application executed on behalf of the corporation setting forth:

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

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

(3) The address of the main office or headquarters of the corporation;

(4) The address of the registered office of the corporation in this State, and the name of its registered agent in this State at that address, together with a statement that the registered agent is an agent of the corporation upon whom process against the corporation may be served; and

(5) The character of the activities it is to conduct in this State, together with a statement that it is authorized to conduct those activities in the jurisdiction of its incorporation.

b. Attached to the application shall be a certificate setting forth that the corporation is in good standing under the laws of the jurisdiction of its incorporation, executed by the official of that jurisdiction who has custody of the records pertaining to corporations and dated not earlier than 30 days prior to the filing of the application. If the certificate is in a foreign language, a translation thereof under oath of the translator shall be attached thereto.

c. Upon the filing of the original and the copy of the application, the Secretary of State shall forward the copy to the Attorney General and shall issue to the foreign corporation a certificate of authority to conduct activities in this State.

L.1983, c. 127, s. 15A:13-4, eff. Oct. 1, 1983.

#### **15A:13-5. Effect of certificate of authority**

Upon the issuance of a certificate of authority by the Secretary of State, the foreign corporation shall be authorized to conduct in this State any activities of the character set forth in its application. The authority shall continue so long as it retains authority to conduct those activities in the jurisdiction of its incorporation and its authority to conduct activities in this State has not been surrendered or revoked.

L.1983, c. 127, s. 15A:13-5, eff. Oct. 1, 1983.

#### **15A:13-6. Amended certificate of authority**

a. A foreign corporation authorized to conduct activities in this State shall procure an amended certificate of authority in the event it desires to change its corporate name, or to enlarge, limit or otherwise change the character of the activities which it proposes to conduct in this State, by making application therefore to the Secretary of State.

b. The requirements in respect to the form and contents of the application, the manner of its execution, the filing thereof in the office of the Secretary of State, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority.

L.1983, c. 127, s. 15A:13-6, eff. Oct. 1, 1983.

#### **15A:13-7. Change of name by foreign corporation**

Whenever a foreign corporation which is authorized to conduct activities in this State shall change its name to one under which a certificate of authority would not be granted to it on application therefore, the certificate of authority of the corporation shall be suspended and the corporation shall not thereafter conduct any activities in this State until it has changed its name to a name which is available to it under the laws of this State or has otherwise complied with the provisions of this act.

L.1983, c. 127, s. 15A:13-7, eff. Oct. 1, 1983.

#### **15A:13-8. Withdrawal of foreign corporation**

a. A foreign corporation authorized to conduct activities in this State may withdraw from this State upon procuring from the Secretary of State a certificate of withdrawal. In order to procure a certificate of withdrawal, the foreign corporation shall file in the office of the Secretary of State an original and a copy of an application for withdrawal, executed on behalf of the corporation, setting forth:

(1) the name of the corporation and the jurisdiction of its incorporation;

(2) that the corporation is not conducting activities in this State;

(3) that the corporation surrenders its authority to conduct activities in this State; and

(4) a post-office or street address within or without this State to which the Secretary of State may mail a copy of any process against the corporation that may be served on the Secretary of State.

b. Upon the filing of the original and the copy of an application for withdrawal, the Secretary of State shall forward the copy to the Attorney General and shall issue to the corporation a certificate of withdrawal, whereupon:

(1) the authority of the corporation to conduct activities in this State shall cease;

(2) the authority of its registered agent in this State to accept service of any process against the corporation shall be deemed revoked;

(3) the corporation shall be deemed to have irrevocably consented that service of process in any action or proceeding based upon any liability or obligation incurred by it within this State before the issuance of the certificate of withdrawal may thereafter be made on the corporation by service thereof on the Secretary of State or the person designated by the Secretary of State; and

(4) the Secretary of State shall be charged with the duties and shall be entitled to receive fees with respect to any process which may be served hereunder on the Secretary of State or the chief clerk of the office of the Secretary of State, as is provided in N.J.S. 2A:15-26 to 2A:15-30.

c. The post-office address specified in paragraph (4) of subsection a. of this section may be changed from time to time by filing in the office of the Secretary of State an original and a copy of a certificate executed on behalf of the corporation setting forth:

- (1) the name of the foreign corporation;
- (2) the jurisdiction of its incorporation;
- (3) the date of the issuance of its certificate of withdrawal by the Secretary of State; and
- (4) the changed post-office address.

The Secretary of State shall forward the copy of the certificate to the Attorney General.

L.1983, c. 127, s. 15A:13-8, eff. Oct. 1, 1983.

#### **15A:13-9. Termination of existence of foreign corporation**

a. When a foreign corporation authorized to conduct business in this State is dissolved, or its authority or existence is otherwise terminated or cancelled in the jurisdiction of its incorporation, or it is merged into or consolidated with another corporation, there shall be filed in the office of the Secretary of State:

(1) a certificate of the official of the jurisdiction of incorporation of the foreign corporation who has custody of the records pertaining to corporations, attesting to the occurrence of the event; or

(2) a certified copy of an order or decree of a court of competent jurisdiction directing the dissolution of the foreign corporation, the termination of its existence, or the cancellation of its authority, together with a statement executed on behalf of the corporation of the post-office address within or without this State to which the Secretary of State may mail a copy of any process against the corporation that may be served on the Secretary of State.

b. Upon the filing of the certificate, order or decree and the statement of the post-office address, the Secretary of State shall issue a certificate of withdrawal with like effect as provided in subsection b. of section 15A:13-8 and shall notify the Attorney General of the action.

c. The post-office address specified in subsection a. of this section may be changed from time to time in the same manner as is provided in subsection c. of section 15A:13-8.

L.1983, c. 127, s. 15A:13-9, eff. Oct. 1, 1983.

#### **15A:13-10. Revocation of certificate of authority; issuance of certificate of revocation**

a. In addition to any other ground for revocation provided by law, the certificate of authority of a foreign corporation to conduct activities in this State may be revoked by the Secretary of State upon the conditions prescribed in this section when:

(1) The corporation has failed to apply for an amended certificate of authority within 90 days after it was required to do so under this act; or

(2) The corporation has failed to maintain a registered agent in this State as required by this act; or

(3) The corporation has failed, after change of its registered office or registered agent to file in the office of the Secretary of State a statement of the change as required by this act.

b. A certificate of authority of a foreign corporation shall not be revoked by the Secretary of State unless:

(1) The Secretary of State has given the corporation not less than 90 days' notice that the default exists and that its certificate of authority will be revoked unless the default is cured within 90 days after the mailing of the notice; and

(2) The corporation shall fail prior to revocation to cure the default.

The notice shall be sent by certified mail to the corporation at its registered office in this State and at its main office or headquarters as those offices are on record in the office of the Secretary of State.

c. Upon revoking any certificate of authority the Secretary of State shall issue a certificate of revocation and shall mail a copy to the corporation at each of the addresses designated in subsection b. of this section and shall forward a copy to the Attorney General.

d. The issuance of the certificate of revocation shall have the same force and effect as the issuance of a certificate of withdrawal under subsection b. of section 15A:13-8.

L.1983, c. 127, s. 15A:13-10, eff. Oct. 1, 1983.

#### **15A:13-11. Conducting activities without certificate of authority**

a. A foreign corporation conducting activities in this State without a certificate of authority shall not maintain any action or proceeding in any court of this State, until the corporation obtains a certificate of authority. This prohibition shall apply to:

(1) Any successor in interest of the foreign corporation, except any receiver, trustee in bankruptcy or other representative of creditors of the corporation; and

(2) Any assignee of the foreign corporation, except an assignee for value who accepts an assignment without knowledge that the foreign corporation should have but has not obtained a certificate of authority in this State.

b. The failure of a foreign corporation to obtain a certificate of authority to conduct activities in this State shall not impair the validity of any contract or act of the corporation, and shall not prevent the corporation from defending any action or proceeding in any court of this State.

c. In addition to any other liabilities imposed by law, a foreign corporation which conducts activities in this State without a certificate of authority shall forfeit to the State a penalty of not less than \$200.00, nor more than \$1,000.00 for each calendar year from and after the effective date of this act in which it shall have conducted activities in this State without a certificate of authority, provided that the number of years for which a penalty may be forfeited shall not exceed five. The penalty shall be recovered with costs in an action prosecuted by the Attorney General. The court may proceed in the action in a summary manner or otherwise.

d. The prohibitions of this section shall not be operative until 90 days after the effective date of this



act.

L.1983, c. 127, s. 15A:13-11, eff. Oct. 1, 1983.

### **15A:13-12. Injunction against foreign corporation**

a. The Attorney General may bring an action in the Superior Court in the name of the State to enjoin a foreign corporation from conducting activities in this State:

- (1) Without having first obtained a certificate of authority pursuant to this chapter;
- (2) Of a character not set forth in its application for a certificate of authority or for an amended certificate of authority;
- (3) After its authority to conduct activities in this State has been surrendered or revoked;
- (4) After it is dissolved or its authority or existence is otherwise terminated or canceled in the jurisdiction of its incorporation;
- (5) If it has procured its organization certificate of authority through fraudulent misrepresentation or concealment of a material fact;
- (6) If it has repeatedly exceeded the authority conferred upon it by law;
- (7) If it has repeatedly conducted its business in an unlawful manner;
- (8) If it has misused or failed to use its powers, privileges or franchises;
- (9) If it is insolvent;
- (10) If it is conducting its activities in violation of its certificate of incorporation or its application for certificate of authority, or, with respect to specific assets, in violation of any restrictions applicable to those assets imposed upon it;
- (11) If it is conducting its activities at a great loss and with great prejudice to the interests of its creditors or members; or
- (12) If it is conducting activities in a manner which is prejudicial to the public.

b. The Superior Court may proceed in the action in a summary manner or otherwise. Upon a showing by clear and convincing evidence of any cause set forth in subsection a. of section 15A:12-11, the court may declare the corporation's certificate of authority revoked and a copy of the order of the court shall be filed in the office of the Secretary of State as evidence thereof, but the failure to file the order with the Secretary of State shall not affect the enforceability of the order.

c. The provisions of this section shall not exclude any other ground provided by law for injunctive relief against a foreign corporation to restrain it from the exercise of any franchise or the conducting of any activities within this State.

L.1983, c. 127, s. 15A:13-12, eff. Oct. 1, 1983.

### **15A:13-13. Vesting of title to real property upon merger or consolidation of foreign corporations**

a. As used in this section:

(1) "Surviving foreign corporation" means a foreign corporation into which one or more other foreign corporations have merged;

(2) "New foreign corporation" means a foreign corporation formed by the consolidation of two or more other foreign corporations;

(3) "Certificate of merger" means the instrument, by whatever name it is called, filed or issued under any statute to merge one or more foreign corporations into a new foreign corporation;

(4) "Certificate of consolidation" means the instrument, by whatever name it is called, filed or issued under any statute to consolidate two or more foreign corporations into a new foreign corporation;

(5) "Certified copy", when used with reference to a certificate of merger or a certificate of consolidation, means a copy of the certificate of merger or of the certificate of consolidation, as the case may be, which was filed in or issued by the jurisdiction of the surviving corporation, as the case may be, to make the merger or consolidation effective, certified by the official of the jurisdiction having custody of its records pertaining to corporations.

b. Whenever a foreign corporation merges into or consolidates with another foreign corporation, and a certified copy of the certificate of merger or certificate of consolidation, as the case may be, is filed in the office of the Secretary of State of New Jersey, all real property in New Jersey and all interests therein, owned by each of the merging or consolidating foreign corporations, shall be deemed to vest in the surviving foreign corporation or the new foreign corporation, as the case may be, upon the effective date of the merger or consolidation, without further act or deed. The merger or consolidation shall be valid and effectual to vest title to the real property and interests therein in the surviving foreign corporation or the new foreign corporation, as the case may be, as fully and completely as if regularly conveyed to it by deed.

c. The provisions of this section shall apply to every merger and to every consolidation of foreign corporations which become effective before the effective date of this act, as well as to every merger and every consolidation of foreign corporations which shall become effective after the effective date of this act, whether the certified copy of the certificate of merger or of the certificate of consolidation, as the case may be, was filed in the office of the Secretary of State of New Jersey before the effective date of this act or shall be filed thereafter. In the case of mergers or consolidations of foreign corporations which became effective before the effective date of this act, the title of each surviving foreign corporation and of each new foreign corporation to all real property in New Jersey and to all interests in real property in New Jersey which at the time of the merger or consolidation was owned by each foreign corporation which was a party to the merger or consolidation is hereby confirmed and made valid and effectual, provided a certified copy of the certificate of merger or of the certificate of consolidation, as the case may be, is filed in the office of the Secretary of State of New Jersey.

L.1983, c. 127, s. 15A:13-13, eff. Oct. 1, 1983.

### **15A:14-1. Definitions**

As used in this chapter:

- a. "Corporation" means a domestic corporation or a foreign corporation;
- b. "Creditor" means the holder of any claim, of whatever character, against a corporation, whether secured or unsecured, matured or unmatured, liquidated or unliquidated, absolute or contingent;
- c. "Debt" includes any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent;
- d. "Encumbrance" means a mortgage, security interest, lien or charge of any nature in or upon property;
- e. "Fair consideration" is given for property or an obligation when, in exchange for the property or obligation, as a fair equivalent therefore, and in good faith, property is transferred or an antecedent debt is satisfied, or when the property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared with the value of the property or obligation obtained;
- f. "Insolvent", a corporation shall be deemed to be insolvent for the purposes of this chapter (1) when the aggregate of its property, exclusive of any property which it may have conveyed, transferred, concealed, removed or permitted to be concealed or removed, with intent to defraud, hinder or delay its creditors, shall not at a fair valuation be sufficient in amount to pay its debts, or (2) when the corporation is unable, by its available assets or the honest use of credit, to pay its debts as they become due;
- g. "Property" means real property, tangible and intangible personal property, and rights, claims and franchises of every nature;
- h. "Receiver" means a receiver of a corporation appointed pursuant to this chapter, and includes corporations authorized by law to act as receivers in this State, as well as individuals;
- i. "Receivership action" means an action brought pursuant to this chapter for the appointment of a receiver of a corporation;
- j. "Transfer" means the sale and every other method, direct or indirect, of disposing of or parting with property or with an interest therein, or with the possession thereof, or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings, as a conveyance, sale, payment, pledge, mortgage, lien, encumbrance, gift, security, or otherwise, and the retention of security title to property delivered to a corporation shall be deemed a transfer suffered by the corporation.

L.1983, c. 127, s. 15A:14-1, eff. Oct. 1, 1983.

#### **15A:14-2. Jurisdiction of the superior court; appointment of receiver**

- a. A receivership action may be brought in the Superior Court by:
  - (1) a creditor whose claim is for a sum certain or for a sum which can by computation be made certain;
  - (2) a member or members who individually or in combination constitute at least 10% of the members of any class of members of the corporation;
  - (3) the corporation, pursuant to resolution of its board; or

(4) the Attorney General.

b. The action shall be based upon at least one of the following grounds:

(1) the corporation has misused or improperly failed to use its powers, privileges or franchises;

(2) the corporation is insolvent;

(3) the corporation has suspended its ordinary activities for lack of funds;

(4) the activities of the corporation are being conducted in violation of its certificate of incorporation or, with respect to specific assets, in violation of any terms, conditions, or restrictions applicable to those assets imposed upon the corporation;

(5) the activities of the corporation are being conducted at a great loss and with great prejudice to the interests of its creditors or members;

(6) the board has determined that it is advisable that the corporation be dissolved, its affairs settled, and its estate and effects divided and distributed by the court pursuant to this chapter; or

(7) if brought by the Attorney General, that the continued conduct of activities by the corporation is prejudicial to the public.

c. The court may proceed in the action in a summary manner or otherwise. It shall have power to appoint and remove one or more receivers of the corporation from time to time, and to enjoin the corporation, its officers and agents, from exercising any of its privileges and franchises, and from collecting or receiving any debts, or paying out, selling, assigning or transferring any of its property, except to a receiver, and except as the court may otherwise order. One or more receivers so appointed may be selected from among the trustees of the corporation. In an action by the Attorney General, the court may take action only upon a showing by clear and convincing evidence of any cause set forth in subsection b. of this section. The court shall have all powers as shall be appropriate for the fulfillment of the purposes of this chapter including the power, if equitable, to set aside any transfer in violation of any terms, conditions, or restrictions, applicable to assets imposed upon the corporation.

d. Every receiver shall, before assuming the receiver's duties, execute and file a bond in the office of the clerk of the Superior Court, with sureties and in form as the court shall approve.

L.1983, c. 127, s. 15A:14-2, eff. Oct. 1, 1983.

### **15A:14-3. Multiple receivers**

When more than one receiver of a corporation is appointed:

(a) the provisions of this chapter applicable to one receiver shall be applicable to all;

(b) the debts and property of the corporation may be collected and received by any of them; and

(c) the powers and rights conferred upon them may be exercised by a majority of them.

L.1983, c. 127, s. 15A:14-3, eff. Oct. 1, 1983.

#### **15A:14-4. Title to corporate property and franchises**

a. Upon appointment, the receiver shall become vested with the title to all the property of the corporation, of every nature, including its franchises.

b. For the purpose of avoiding encumbrances, transfers and preferences, the right and title of a receiver shall relate back to the date upon which the receivership action commenced.

L.1983, c. 127, s. 15A:14-4, eff. Oct. 1, 1983.

#### **15A:14-5. Powers of receivers; general**

Subject to the general supervision of the Superior Court and pursuant to specific order where appropriate, a receiver may:

a. take into possession all the property of the corporation including its books, records and papers;

b. institute and defend actions by or on behalf of the corporation;

c. sell, assign, convey or otherwise dispose of all or any part of the property of the corporation;

d. settle or compromise with any debtor or creditor of the corporation, including any taxing authority;

e. summon and examine under oath, which the receiver may administer, or by affirmation, any persons concerning any matter pertaining to the receivership or to the corporation, its property and its transactions, and require that person to produce books, records, papers and other tangible things and to be examined thereon;

f. take testimony within or without the State, and, if without the State, apply to courts of other jurisdictions for compulsory process to obtain the attendance of witnesses;

g. continue the activities of the corporation, and, to that end, enter into contracts, borrow money, pledge, mortgage or otherwise encumber the property of the corporation as security for the repayment of the receiver's loans;

h. do all further acts as shall best fulfill the purposes of this chapter.

L.1983, c. 127, s. 15A:14-5, eff. Oct. 1, 1983.

#### **15A:14-6. Powers of receiver; contempt of court**

If any person summoned to be examined pursuant to section 15A:14-5 shall refuse to be sworn, or to affirm, or to testify, or to answer a proper question, or to produce the books, papers, documents or tangible things demanded, or shall otherwise engage in misconduct, the Superior Court may, on motion, and after affording that person the opportunity to be heard, punish that person in the same manner as like failure is punishable in a case pending in the court.

L.1983, c. 127, s. 15A:14-6, eff. Oct. 1, 1983.

### **15A:14-7. Powers of receiver; sale of property free of encumbrances**

When property of a corporation for which a receiver has been appointed is, at the time of the appointment, subject to one or more encumbrances, the Superior Court, upon the application of the receiver, may authorize the receiver to sell the property at public or at private sale, clear of encumbrances, for a price and upon terms as the court may approve. A sale shall not be authorized nor made except upon prior notice to the holders of the encumbrances affecting the property, and unless the receiver demonstrates to the satisfaction of the court that the sale of the property may be reasonably expected to benefit general creditors of the corporation without adversely affecting the interests of the holders of the encumbrances. The proceeds of the sale shall be paid into court, there to remain until the further order of the court, subject to the same encumbrances which affected the property at the time of the sale.

L.1983, c. 127, s. 15A:14-7, eff. Oct. 1, 1983.

### **15A:14-8. Rights of debtors; setoff; counterclaim**

a. In all cases of mutual debts or mutual credits between the corporation and a creditor, the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid.

b. A right of setoff or counterclaim shall not be allowed in favor of any debtor of the corporation if it was acquired by the debtor after the commencement of the receivership action, or within 4 months before the commencement, with a view to the use and with knowledge or notice that the corporation was insolvent.

L.1983, c. 127, s. 15A:14-8, eff. Oct. 1, 1983.

### **15A:14-9. Payment or delivery to corporation**

a. After the commencement of a receivership action, but before the appointment of a receiver, a debtor of the corporation may make payment to the corporation of the debt, and a person holding property of the corporation may deliver it to the corporation, and the payment and the delivery shall have the same effect as if the receivership action were not pending.

b. If the payment or the delivery is made after the appointment of a receiver by a person acting in good faith the payment and the delivery shall have the same effect as if a receiver had not been appointed.

L.1983, c. 127, s. 15A:14-9, eff. Oct. 1, 1983.

### **15A:14-10. Fraudulent transfers**

a. Every transfer made and every obligation incurred by a corporation which is or will be thereby rendered insolvent, is fraudulent as to creditors without regard to its actual intent if the transfer is made or the obligation is incurred without a fair consideration.

b. Every transfer made without fair consideration, when the corporation making it is engaged or is about to engage in an activity or transaction for which the assets remaining in its hands after the transfer are unreasonably small, is fraudulent as to creditors and as to other persons who become creditors during the continuance of the business or transaction without regard to its actual intent.

c. Every transfer made and every obligation incurred without fair consideration when the corporation making the transfer or entering into the obligation intends to or believes that it will incur debts beyond its ability to pay as they mature, is fraudulent as to both present and future creditors.

d. Every transfer made and every obligation incurred by a corporation with actual intent, as distinguished from intent presumed in law, to hinder, or defraud either present or future creditors of the corporation, is fraudulent as to both present and future creditors.

e. Every transfer made and every obligation incurred by a corporation which is or will thereby be rendered insolvent, within 4 months prior to the commencement of a receivership action by or against the corporation, is fraudulent as to the then existing and future creditors: (1) if made or incurred in contemplation of the commencement of the action or in contemplation of liquidation of all or the greater portion of the corporation's property, with intent to use the consideration obtained for the transfer or obligation to enable any creditor of the corporation to obtain a greater percentage of a debt than some other creditor of the same class; and (2) if the transferee or obligee of the transfer or obligation, at the time of the transfer or obligation, knew or believed that the corporation intended to make that use of the consideration.

f. For the purposes of this section, a transfer shall be deemed to have been made at the time when it became so far perfected that no purchaser from the corporation could thereafter have acquired any rights in the property so transferred superior to the rights of the transferee therein, but, if the transfer is not so perfected prior to the commencement of the receivership action by or against the corporation, it shall be deemed to have been made immediately before the filing of the action.

L.1983, c. 127, s. 15A:14-10, eff. Oct. 1, 1983.

#### **15A:14-11. Fraudulent transfers; continued**

a. A transfer or an obligation incurred which is fraudulent under section 15A:14-10 against a creditor, is fraudulent against the receiver, except as to a purchaser for a fair consideration, without knowledge of the fraud at the time of the purchase.

b. When a transfer made or an obligation incurred is fraudulent as to a creditor whose claim has matured, the receiver may, as against any person except a purchaser for a fair consideration without knowledge of the fraud at the time of the purchase, or one who has derived title immediately, or immediately from the purchaser:

(1) Disregard the transfer and attach or levy execution upon the property conveyed or the obligation;  
or

(2) Have the transfer set aside or the obligation annulled to the extent necessary to satisfy the creditor's claim.

c. A purchaser who, without actual fraudulent intent, has given less than a fair consideration for the transfer or obligation, may retain the property or obligation as security for repayment.

d. When a transfer made or an obligation incurred is fraudulent as to a creditor whose claim has not matured, the receiver may proceed in the Superior Court against any person against whom the receiver could have proceeded if the claim were matured, and the court may:

(1) Restrain the defendant from disposing of the property covered or affected by the conveyance or of the obligation;

(2) Direct that the property or obligation be delivered to the custody of the receiver;

(3) If equitable, set aside the conveyance or annul the obligation to the extent necessary to satisfy the claim.

L.1983, c. 127, s. 15A:14-11, eff. Oct. 1, 1983.

#### **15A:14-12. Fraudulent transfers; continued**

Nothing contained in section 15A:14-10 or 15A:14-11 shall be construed to validate a transfer which is voidable under section 15A:14-13.

L.1983, c. 127, s. 15A:14-12, eff. Oct. 1, 1983.

#### **15A:14-13. Liens by legal process**

a. Every lien against the property of a corporation shall be void if:

(1) The lien is obtained by attachment, judgment, levy or other legal process; and

(2) A receivership action against the corporation is commenced within 4 months after the date on which the lien was obtained, or if the lien is obtained after the commencement of the receivership action; and

(3) The assets of the corporation are distributed in the receivership action.

b. The property affected by any lien shall be discharged from the lien and shall pass to the receiver, but the court may order that lien to be preserved for the benefit of the corporation's creditors. The Superior Court may direct the conveyance of the property affected as may be proper or adequate to evidence title thereto of the receiver. The title of a bona fide purchaser of the property shall be valid, but, if the title is acquired otherwise than by a judicial sale held to enforce the lien, it shall be valid only to the extent of the present consideration paid for the property.

L.1983, c. 127, s. 15A:14-13, eff. Oct. 1, 1983.

#### **15A:14-14. Preferences**

a. For the purpose of this chapter, a preference arises when:

(1) A corporation which, while insolvent, and within 4 months of the commencement of a receivership action by or against it, transfers any property to or for the benefit of a creditor for or on account of an antecedent debt; and

(2) The effect of the transfer will be to enable the creditor to obtain a greater percentage of a debt than some other creditor of the same class; and

(3) The creditor receiving or to be benefited by the transfer, or the creditor's agent acting with reference thereto, has, at the time when the transfer is made, reasonable cause to believe that the corporation is



insolvent.

b. For the purpose of determining whether a preference has arisen:

(1) A transfer of property other than real property shall be deemed to have been made or suffered at a time when it became so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee;

(2) A transfer of real property shall be deemed to have been made or suffered when it became so far perfected that no subsequent bona fide purchase from the corporation could create rights in the property superior to the rights of the transferee.

c. If any transfer of real property is not so perfected against a bona fide purchase, or if any transfer of other property is not so perfected against liens by legal or equitable proceedings prior to the commencement of a receivership action it shall be deemed to have been made immediately before the commencement of the action.

d. When a preference has arisen, the receiver may recover the property or, if it has been converted, its value, from any person who has received or converted the property, except a bona fide purchaser from or lienor of the corporation's transferee for a present fair consideration. Where the bona fide purchaser or lienor has given less than that value, the person shall nevertheless have a lien upon the property, but only to the extent of the consideration actually given by that person. When a preference is by way of lien or security title, the Superior Court may on due notice order the lien or title to be preserved for the benefit of the insolvent corporation's estate, in which event the lien or title shall pass to the receiver.

e. If a creditor has been preferred and afterward in good faith gives the corporation further credit without security of any kind for property which becomes a part of the insolvent corporation's property, the amount of the new credit remaining unpaid at the time of the commencement of the receivership action may be set off against the amount which would otherwise be recoverable from the creditor.

L.1983, c. 127, s. 15A:14-14, eff. Oct. 1, 1983.

### **15A:14-15. Notice to creditors**

a. The receiver shall, within 30 days following the date of appointment, give notice requiring all creditors to present their claims in writing. The notice shall be published twice, once in each of 2 consecutive weeks, in a newspaper of general circulation in the county in which the registered office of the corporation is located and shall state that all persons who are creditors of the corporation shall present written proof of their claims, under oath, to the receiver at a place and on or before a date named in the notice, which date shall not be less than 6 months after the date of the first publication. By order of the Superior Court, the time for giving the notice to creditors and the time within which creditors shall be required to file proofs of claims may be extended or limited, or the giving of the notice to creditors may be entirely excused.

b. Any creditor who does not file a claim as provided in the notice given pursuant to subsection a. of this section, and all those claiming through or under that creditor, shall be forever barred from suing on the claim or otherwise realizing upon or enforcing it except, in the case of a creditor who shows good cause for not having previously filed a claim, to the extent as the Superior Court may allow:

(1) Against the corporation to the extent of any undistributed assets; or

(2) If the undistributed assets are not sufficient to satisfy the claim, against a member to the extent of the ratable part of the claim, out of the assets of the corporation distributed to the member in liquidation or dissolution.

c. On or before the date of the first publication of the notice as provided in subsection a. of this section, the receiver shall mail a copy of the notice to each known creditor of the corporation. The giving of the notice shall not constitute recognition that any person to whom the notice is directed is a creditor of the corporation other than for the purpose of receipt of notice hereunder.

d. Proof of the publication and mailing required by this section shall be made by an affidavit filed in the office of the Clerk of the Superior Court.

L.1983, c. 127, s. 15A:14-15, eff. Oct. 1, 1983.

#### **15A:14-16. Claims; presentation; approval or rejection**

Creditors shall, if required by the receiver, submit themselves to examination by the receiver and produce before the receiver the records and proof relating to their claims as the receiver may direct. The receiver may also examine under oath all witnesses produced before the receiver relating to the claims, and the receiver shall pass upon, and allow or disallow, the claims, and shall notify the creditors of that determination.

L.1983, c. 127, s. 15A:14-16, eff. Oct. 1, 1983.

#### **15A:14-17. Claims; jury trial**

A creditor who presents a claim to a receiver pursuant to this chapter and whose claim is disallowed in whole or in part by the receiver shall, on demand in writing, be entitled to trial by jury on any issue triable of right by jury.

L.1983, c. 127, s. 15A:14-17, eff. Oct. 1, 1983.

#### **15A:14-18. Review of receiver's actions**

Any person aggrieved by the proceedings or determination of the receiver in the discharge of his duties shall be entitled to a review of the receiver's action in a summary manner in the Superior Court.

L.1983, c. 127, s. 15A:14-18, eff. Oct. 1, 1983.

#### **15A:14-19. Discontinuance of receivership action**

A receivership action against a corporation may be discontinued at any time when it is established that cause for the action no longer exists. In that event, the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its property remaining in the receiver's hands. Upon the redelivery, the corporation shall be revested with full rights in the property and in its franchises as if the receiver had not been appointed.

L.1983, c. 127, s. 15A:14-19, eff. Oct. 1, 1983.

### **15A:14-20. Allowances to receiver and others; costs and expenses**

In any proceeding under this chapter, the court shall allow a reasonable compensation to the receiver for services, costs and expenses in the receivership action. It shall also allow reasonable compensation to the following for their services in the receivership action and their costs and expenses: the attorney for the receiver, the appraiser, the auctioneer, the accountant and other persons appointed by the court in connection with the receivership action.

L.1983, c. 127, s. 15A:14-20, eff. Oct. 1, 1983.

### **15A:14-21. Distribution of assets; priorities**

a. After payment of all allowances, expenses and costs, and, subject to the laws of the United States and to subsection c. of this section, the satisfaction of all liens upon the funds of the corporation to the extent of their lawful priority, the creditors shall be paid proportionately to the amount of their respective debts, excepting mortgage and judgment creditors when the judgment has not been by confession for the purpose of preferring creditors. The creditors shall be entitled to distribution on debts not due, making in that case a rebate of interest, when interest is not accruing on those debts.

b. The surplus funds, if any, after payment to the creditors and the costs, expenses and allowances, as aforesaid, shall be divided and distributed as in the case of a voluntary dissolution of the corporation.

c. In any distribution to creditors all persons doing labor or service of any character, in the regular employment of the corporation, shall be entitled to priority of payment for the wages, not to exceed \$600.00 for each claimant, due them respectively for all labor, work and services performed within 3 months before the institution of a receivership action under this chapter. A claim under this subsection shall have priority over all other claims against the corporation, but shall be subordinate to (1) a security interest in personal property perfected prior to the date when the receivership action was instituted, which perfected security interest cannot be set aside by the receiver under the provisions of this chapter; (2) mortgages upon the real property of the corporation; and (3) all claims entitled to higher priority by law.

L.1983, c. 127, s. 15A:14-21, eff. Oct. 1, 1983.

### **15A:14-22. Judgment of dissolution**

After distribution of the corporation's assets as provided in section 15A:14-21, the Superior Court may make a judgment dissolving the corporation and declaring its certificate of incorporation forfeited and void. The judgment shall be forthwith filed by the clerk of the court in the office of the Secretary of State, and a notation thereof shall be made by the Secretary of State on the certificate of incorporation of the corporation affected. The Secretary of State shall notify the Attorney General of the action.

L.1983, c. 127, s. 15A:14-22, eff. Oct. 1, 1983.

### **15A:14-23. Reorganization under act of congress; "plan of reorganization" defined**

As used in sections 15A:14-24 and 15A:14-25, "plan of reorganization" means a plan of corporate reorganization which has been ordered or confirmed by a court or by a commission or other agency of the United States, in a proceeding brought under any act of Congress providing for the reorganization of corporations.

L.1983, c. 127, s. 15A:14-23, eff. Oct. 1, 1983.

**15A:14-24. Reorganization under act of congress; implementation of plan of reorganization**

a. A corporation shall have the power to do any act required or permitted by a plan of reorganization in order to put the plan in effect according to its terms.

b. The power conferred by subsection a. of this section shall be exercised by the trustee or trustees, or other person or persons acting in similar capacities, appointed in the reorganization proceeding resulting in the plan of reorganization, or, if none be then acting, by any other person or persons designated or appointed for that purpose in the organization proceeding, or, if no other person or persons be then acting, by an officer or officers of the corporation.

c. The exercise of the power to put in effect a plan of reorganization by those designated in subsection b. of this section shall have the same effect as if done with the unanimous consent of the trustees and the members.

L.1983, c. 127, s. 15A:14-24, eff. Oct. 1, 1983.

**15A:14-25. Reorganization under act of congress; certificates**

When any plan of reorganization provides for any action to be taken, which, if taken pursuant to any provisions of this act, would require the filing of a certificate or other document in the office of the Secretary of State, the certificate or other document shall be executed on behalf of the corporation by the persons specified in subsection b. of section 15A:14-24 and shall be filed in the office of the Secretary of State. The certificate or other document shall recite that its making and filing are authorized pursuant to a plan of reorganization, and shall make reference to the proceeding in which the plan of reorganization was ordered or confirmed.

L.1983, c. 127, s. 15A:14-25, eff. Oct. 1, 1983.

**15A:14-26. Reorganization under act of congress; powers and duties of state instrumentalities**

Nothing contained in sections 15A:14-24 and 15A:14-25 shall be construed to abrogate, limit or restrict the powers and duties over any corporation imposed or conferred by law on any State officer, board, commission or other agency.

L.1983, c. 127, s. 15A:14-26, eff. Oct. 1, 1983.

**15A:15-1 Filing fees of the State Treasurer**

15A:15-1. Filing Fees of the State Treasurer. On filing any certificate or other papers relative to corporations in the Department of the Treasury, there shall be paid to the State Treasurer filing fees as follows:

a. Certificate of incorporation and amendments thereto:

(1) for filing the original certificate of incorporation \$75.00

(2) for filing a certificate of amendment of the certificate of incorporation including any number of amendments \$75.00

(3) for filing a certificate of abandonment of one or more amendments of the certificate of incorporation \$75.00

(4) for filing a certificate of merger or a certificate of consolidation \$75.00

(5) for filing a certificate of abandonment of a merger or consolidation \$75.00

b. Restated certificate of incorporation: for filing a restated certificate of incorporation including any amendments of the certificate of incorporation concurrently adopted \$75.00

c. Dissolution of corporation:

(1) for filing a certificate of dissolution \$75.00

(2) for filing a certificate of revocation of dissolution proceedings \$75.00

d. Admission and withdrawal of foreign corporation:

(1) for filing an application for a certificate of authority to conduct activities in this State and issuing a certificate of authority \$125.00

(2) for filing an application for an amended certificate of authority to conduct activities in this State and issuing an amended certificate of authority \$75.00

(3) for filing an application for withdrawal from this State and issuing a certificate of withdrawal \$75.00

(4) for filing a certificate of change of post office address to which process may be mailed by the State Treasurer \$25.00

(5) for filing a certificate, order or decree with respect to the dissolution of a foreign corporation, the termination of its existence, or the cancellation of its authority, and issuing a certificate of withdrawal \$75.00

e. Registered office and registered agent:

(1) for filing a certificate of change of address of registered office, or change of registered agent or both \$25.00

(2) for filing a certificate of change of address of registered agent where such certificate effects a change in the address of the registered office of one or more corporations, for each corporation named in the certificate \$25.00

(3) for filing an affidavit of resignation of a registered agent \$25.00

f. Annual report: for each such report required to be filed \$25.00

g. Reinstatement filing assessment: payment of a reinstatement filing assessment \$75.00.

L.1983, c.127, s.15A:15-1, eff. Oct. 1, 1983; amended 1987, c.435, s.12; 1997, c.138, s.3; 2002, c.34, s.23.

**15A:15-2 Additional miscellaneous fees**

The State Treasurer shall also charge and collect for:

a. filing an application to reserve a specified corporate name and issuing a certificate of reservation  
\$50.00

(1)if application is for first name available for corporate use among not more than three specified names  
\$50.00

b. filing a notice of transfer of a reserved corporate name \$50.00

c. filing an application by a foreign corporation to register its corporate name\$50.00

d. filing an application by a foreign corporation to renew the registration of its corporate name\$50.00

e. issuing a certificate of standing, including registered agent and registered office\$25.00

f. issuing a certificate of standing, same as above, but including incorporators, officers and trustees  
\$25.00

g. issuing a certificate of standing, listing charter documents \$25.00

h. issuing a certificate of availability of corporate name (1 to 3 names) \$25.00

i. filing a certificate of registration of alternate name \$50.00

j. filing a certificate of renewal of registration of alternate name \$50.00

k. filing a certificate of correction \$50.00

l. corporate status reports--per name \$5.00

L.1983, c.127, s.15A:15-2, eff. Oct. 1, 1983; amended 1987, c.435, s.13; 2002, c.34, s.24.

**15A:16-1. Acts saved from repeal**

The following are saved from repeal:

R.S. 15:1-6 is saved from repeal. This section deals with specially incorporated boards of trade;

R.S. 15:1-23 is saved from repeal. This section preserves certain nonprofit corporations in existence prior to July 4, 1898;

R.S. 15:4-1 to R.S. 15:4-4 inclusive are saved from repeal. These sections govern detective associations;

R.S. 15:5-1 to R.S. 15:5-7 inclusive are saved from repeal. These sections provide for a procedure for owners to drain swamp and meadow grounds and provide assessments for their drainage;

"An act to enable the owners of tide swamps and marshes to improve the same, and the owners of meadows already banked in and held by different persons, to keep the same in good repair," passed November 29, 1788, together with all amendments and supplements thereto which were saved from repeal by R.S. 15:5-8 is saved from repeal;

P.L.1957, c. 201 (C. 15:5-8(58)) is saved from repeal. This act supplements "An act to enable the owners of tide swamps and marshes to improve the same, and the owners of meadows already banked in and held by different persons, to keep the same in good repair," passed November 29, 1788;

P.L.1880, c. 163, entitled "An act for incorporation of companies for draining and improving meadows and lands overflowed by tide water," together with the supplements thereto, saved from repeal by R.S. 15:5-9, is saved from repeal;

"An act to enable two-thirds of the owners in value of any body or tract of salt marsh or meadow, within this State, using a common road to the fast land, to support the same," passed November 18, 1822 together with the supplement thereto, saved from repeal by R.S. 15:5-10, is saved from repeal;

P.L.1881, c. 146, entitled "An act to enable the owners of any island, or part thereof, to improve the same and to protect the same from damage by high tides," saved from repeal by R.S. 15:5-11, is saved from repeal;

R.S. 15:8-4 is saved from repeal. This section provides for the appointment by a volunteer fire company of members to perform police duties, their qualifications, and their power to arrest offenders;

R.S. 15:8-5 is saved from repeal. This section provides for the issuance of exempt certificates to volunteer firemen on establishment of a paid fire department;

R.S. 15:8-7 is saved from repeal. This section provides for disposition of accumulated fire department funds on expiration of the charter of the volunteer fire department;

R.S. 15:11-7 and R.S. 15:11-8 are saved from repeal. These sections deal with land acquisition rights of certain nonprofit corporations created for educational purposes, including the power to acquire by condemnation;

R.S. 15:13-3 is saved from repeal. This section deals with the taxability of patriotic societies;

P.L.1969, c. 291 (C. 15:11-4.1) is saved from repeal. This section deals with trustees of certain colleges and universities created by special charter and authorizes the appointment or election of additional members to the board of trustees;

P.L.1975, c. 26, ss. 1 to 10 (C. 15:18-15 to C. 15:18-24 inclusive) are saved from repeal. These sections enacted the "Uniform Management of Institutional Funds Act" ;

P.L.1971, c. 337, ss. 1 to 6 (C. 15:19-1 to C. 15:19-6 inclusive) are saved from repeal. These sections deal with private foundations and split interest trusts as defined by the Internal Revenue Code of 1954, as amended and supplemented.

L.1983, c. 127, s. 15A:16-1, eff. Oct. 1, 1983.

### **15A:16-2. Acts repealed**

The following are repealed:

R.S. 15:1-1 to R.S. 15:1-5 inclusive;

R.S. 15:1-7 to R.S. 15:1-14.1 inclusive;

R.S. 15:1-16 to R.S. 15:1-22 inclusive;

R.S. 15:2-1 to R.S. 15:2-9 inclusive;

R.S. 15:3-1 to R.S. 15:3-12 inclusive;

R.S. 15:6-1 to R.S. 15:6-3 inclusive;

R.S. 15:7-1 to R.S. 15:7-12 inclusive;

R.S. 15:8-1 to R.S. 15:8-3 inclusive;

R.S. 15:8-6 and R.S. 15:8-8;

R.S. 15:10-1 to R.S. 15:10-11 inclusive;

R.S. 15:11-1 to R.S. 15:11-6 inclusive;

R.S. 15:11-9 to R.S. 15:11-15 inclusive;

R.S. 15:12-1;

R.S. 15:13-1 and R.S. 15:13-2;

R.S. 15:14-1 to R.S. 15:14-8 inclusive;

R.S. 15:15-1 and R.S. 15:15-2;

R.S. 15:16-1 to R.S. 15:16-6 inclusive;

P.L. 1947, c. 100 (C. 15:1-11.1);

P.L. 1945, c. 109, ss. 1 to 4 inclusive (C. 15:8-9 to C. 15:8-12 inclusive);



P.L. 1946, c. 226 (C. 15:17-1 and C. 15:17-2).

L.1983, c. 127, s. 15A:16-2, eff. Oct. 1, 1983.