

# ***Statutes and Regulations*** **Corporations**

***August 2023***



DEPARTMENT OF COMMERCE, COMMUNITY,  
AND ECONOMIC DEVELOPMENT

***DIVISION OF CORPORATIONS, BUSINESS  
AND PROFESSIONAL LICENSING***

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**TITLE 10.  
CORPORATIONS AND ASSOCIATIONS**

**Chapter**

- 6. Alaska Corporations Code (§§ 10.06.005 – 10.06.995)
- 10. Business and Industrial Development Corporation Act (§§ 10.10.010 – 10.10.220)
- 15. Alaska Cooperative Corporation Act (§§ 10.15.005 – 10.15.600)
- 20. Alaska Nonprofit Corporation Act (§§ 10.20.005 – 10.20.925)
- 25. Electric and Telephone Cooperative Act (§§ 10.25.010 – 10.25.850)
- 30. Cemetery Associations and Nonprofit Cemetery Corporations (§§ 10.30.010 – 10.30.155)
- 35. Business Names (§§ 10.35.010 – 10.35.500)
- 40. Religious Corporations (§§ 10.40.010 – 10.40.150)
- 45. Professional Corporation Act (§§ 10.45.010 – 10.45.510)
- 50. Alaska Revised Limited Liability Company Act (§§ 10.50.010 – 10.50.995)
- 55. Alaska Entity Transactions Act (§§ 10.55.103 – 10.55.902)

**CHAPTER 05.  
ALASKA BUSINESS CORPORATION ACT  
*[Repealed, § 6 ch 166 SLA 1988.]***

**CHAPTER 06.  
ALASKA CORPORATIONS CODE**

**Article**

- 1. Corporate Purposes and Powers (§§ 10.06.005 – 10.06.025)
- 2. Name, Registered Agent, Registered Office, and Service on Corporation (§§ 10.06.105 – 10.06.175)
- 3. Formation of Corporations (§§ 10.06.205 – 10.06.233)
- 4. Corporate Finance (§§ 10.06.305 – 10.06.390)
- 5. Shareholders and Records (§§ 10.06.405 – 10.06.438)
- 6. Directors, Officers, Employees, and Agents (§§ 10.06.450 – 10.06.490)
- 7. Amendments and Changes (§§ 10.06.502 – 10.06.526)
- 8. Organic Change (§§ 10.06.530 – 10.06.600)
- 9. Dissolution (§§ 10.06.605 – 10.06.678)
- 10. Foreign Corporations (§§ 10.06.705 – 10.06.788)
- 11. Reports, Filings, Interrogatories, Fees, Taxes, Penalties, Enforcement, and Cancellations (§§ 10.06.805 – 10.06.870)
- 12. Miscellaneous Provisions (§§ 10.06.905 – 10.06.935)
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**ARTICLE 1.  
CORPORATE PURPOSES AND POWERS**

**Section**

- 5. Purposes
- 10. General Purposes
- 15. Defense of ultra vires
- 20. Limitations on powers of shareholders, officers, and directors
- 25. Contracts or conveyances binding domestic and foreign corporations

**Sec. 10.06.005. Purposes.** A corporation may be organized under this chapter for any lawful purpose.

**Sec. 10.06.010. General powers.** Subject to the limitations in its articles of incorporation, the provisions of this chapter and other applicable law, a corporation has all the powers of a natural person in carrying out its business activities, including, without limitation, the power to

- (1) have perpetual succession by its corporate name;
- (2) sue and be sued in its corporate name;

(3) adopt a corporate seal and alter it, and use it by having it or a facsimile of it impressed, affixed, or reproduced;

(4) buy, take, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in, real or personal property or an interest in the property, wherever situated;

(5) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or a part of its property and assets;

(6) lend money, if properly approved, to its employees, officers, and directors, and otherwise assist its employees, officers, and directors;

(7) buy, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships, or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality or an instrumentality of these;

(8) make contracts and guarantees, incur liabilities, borrow money at the rates of interest the corporation determines, issue notes, bonds, and other obligations, and secure its obligations by mortgage or pledge of all or any of its property, franchise and income;

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

(10) conduct business, carry on operations, and have offices and exercise the powers granted by this chapter in a state, territory, district, or possession of the United States, or in a foreign country;

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

(12) make and alter bylaws not inconsistent with its articles of incorporation or with state law, for the administration and regulation of the affairs of the corporation;

(13) donate for the public welfare or for charitable, scientific or educational purposes, and in time of war donate in aid of war activities;

(14) transact lawful business in time of war in aid of the United States in the prosecution of the war;

(15) pay pensions and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans and other incentive plans for its directors, officers, and employees;

(16) cease its corporate activities and surrender its corporate franchise;

(17) have and exercise the powers of a limited or general partner or a joint venturer in association with one or more persons, corporations, partnerships, or associations;

(18) have and exercise all powers necessary or convenient to carry out the purposes for which the corporation is organized.

**Sec. 10.06.015. Defense of ultra vires.** (a) An act of a corporation or a transfer of real or personal property to or by a corporation, otherwise lawful, is not invalid because the corporation was without capacity or power to do the act or to make or receive the transfer, but the lack of capacity or power may be asserted

(1) in an action by a shareholder against the corporation to enjoin the doing of an act or the transfer of real or personal property by or to the corporation; if the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made under a contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the action, 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, compensation as may be equitable for the loss or damage sustained by any of them from the action of the court in setting aside and enjoining the performance of the contract; however, anticipated profits to be derived from the contract may not be awarded by the court as a loss or damage sustained;

(2) in an action by or in the right of the corporation to obtain a judgment in its favor against an incumbent or former officer, director, or incorporator of the corporation for loss or damage due to that individual's unauthorized act;

(3) in an action or special proceeding by the commissioner to annul or dissolve the corporation or to enjoin it from the doing of unauthorized business.

(b) This section applies to contracts and conveyances made by foreign corporations in this state and to conveyances by foreign corporations of real property situated in this state.

**Sec. 10.06.020. Limitations on powers of shareholders, officers, and directors.** A limitation upon the powers of the shareholders, officers, or directors, or the manner or exercise of their powers, contained in or implied by the articles of incorporation, bylaws, or action of the board, or by AS 10.06.605 - 10.06.678 or 10.06.705 - 10.06.788 or by a shareholders' agreement may not be asserted as between the corporation or a shareholder and a third person, except in a proceeding

(1) by a shareholder or the state to enjoin the doing or continuance of unauthorized business by the corporation or its officers, or both, in a case where a third party has not acquired rights under AS 10.06.025(a);

- (2) to dissolve the corporation; or
- (3) by the corporation or by a shareholder suing in a representative suit against the officers or directors of the corporation for violation of their duty.

**Sec. 10.06.025. Contracts or conveyances binding domestic and foreign corporations.** (a) A contract or conveyance made in the name of the corporation that is authorized or ratified by the board, or is done within the scope of the authority, actual or apparent, conferred by the board or within the agency power of the officers executing it, except as the board's authority is limited by law, binds the corporation, and the corporation acquires rights under the contract, whether the contract is executed or is wholly or in part executory.

(b) This section applies to contracts and conveyances made by foreign corporations in this state and to conveyances by foreign corporations of real property situated in this state.

## ARTICLE 2. NAME, REGISTERED AGENT, REGISTERED OFFICE, AND SERVICE ON CORPORATION

### Section

- 105. Corporate name
- 110. Reservation of corporate name
- 115. Application for and duration of reservation of name
- 120. Transfer of reserved name
- 125. Registration of corporate name
- 130. Exclusive right to use name; remedies
- 135. Procedure for registration of corporate name
- 140. Fee for and duration of registered name
- 145. Renewal of registered name
- 150. Registered office and registered agent
- 165. Change of registered office or agent by corporation
- 170. Change by agent or resignation of agent
- 175. Service on corporation

**Sec. 10.06.105. Corporate name.** (a) A corporate name must contain the word "corporation", "company", "incorporated", or "limited", or an abbreviation of one of these words. The corporate name may not contain a word or phrase that indicates or implies that the corporation is organized for a purpose other than the purpose contained in its articles of incorporation.

(b) The corporate name may not contain the word "city", "borough", or "village" or otherwise imply that the corporation is a municipality. The name of a city, borough, or village may be used in the corporate name.

(c) A person may not adopt a name that contains the word "corporation", "incorporated", or "limited", or an abbreviation of one of these words, unless the person has been issued a certificate of incorporation, or, in the case of a foreign corporation, a certificate of authority, by the commissioner. This subsection does not prohibit a limited liability company or a limited partnership from using the word "limited" or an abbreviation of "limited" in its name.

(d) A corporate name must be distinguishable on the records of the department from the name of any other organized entity and from a reserved or registered name. The department may adopt regulations to enforce this subsection. In this subsection, "organized entity" and "reserved or registered name" have the meanings given in AS 10.35.040.

**Sec. 10.06.110. Reservation of corporate name.** The exclusive right to the use of a corporate name may be reserved by a

- (1) person intending to organize a corporation under this chapter;
- (2) domestic corporation intending to change its name;
- (3) foreign corporation intending to apply for a certificate of authority to transact business in this state;
- (4) foreign corporation authorized to transact business in this state and intending to change its name; or
- (5) person intending to organize a foreign corporation and to have it apply for a certificate of authority to transact business in this state.

**Sec. 10.06.115. Application for and duration of reservation of name.** Reservation of a corporate name is made by filing an application with the commissioner. If the commissioner finds that the name is available for corporate use under AS 10.06.105(d), the commissioner shall reserve it for the exclusive use of the applicant for a period of 120 days.

**Sec. 10.06.120. Transfer of reserved name.** The holder of a reserved corporate name may transfer the right to the exclusive use of the corporate name to another person by filing a notice of transfer with the commissioner, signed by the holder of the name, and specifying the name and address of the transferee.

**Sec. 10.06.125. Registration of corporate name.** A corporation organized and existing under the laws of a state or territory of the United States may register its corporate name if the name is available for corporate use under AS 10.06.105(d).

**Sec. 10.06.130. Exclusive right to use name; remedies.** (a) A corporation that is organized under this chapter has the exclusive right to the name under which it was organized. A foreign corporation that has obtained a certificate of authority under this chapter has the exclusive right to the name under which it received its certificate of authority. A corporation that has registered a name under AS 10.06.125 has the exclusive right to the use of the registered name.

(b) A corporation with the exclusive right to a name under (a) of this section

(1) may enjoin the use of a name that is not distinguishable on the records of the department from the name to which the corporation has the exclusive right under (a) of this section;

(2) has a cause of action for damages against a person who uses a name that is not distinguishable on the records of the department from the name to which the corporation has the exclusive right under (a) of this section.

**Sec. 10.06.135. Procedure for registration of corporate name.** Registration of a corporate name is made by filing with the commissioner

(1) an application for registration executed by an officer of the corporation setting out the name of the corporation, the state or territory under the laws of which it is incorporated, the date of incorporation, a statement that it is doing business, and a brief statement of its business; and

(2) a certificate from an official of the state or territory where the corporation is organized who has custody of the records pertaining to corporations stating that the corporation is in good standing under the laws of that state or territory.

**Sec. 10.06.140. Fee for and duration of registered name.** (a) The fee for registration of a corporate name shall be established by the department by regulation.

(b) The registration is effective until the close of the calendar year in which the application for registration is filed unless terminated earlier by involuntary dissolution in accordance with AS 10.06.633.

**Sec. 10.06.145. Renewal of registered name.** A corporation that has registered its corporate name may renew the registration each year by (1) filing an application for renewal setting out the facts required in an original application for registration; (2) filing a certificate of good standing required for an original registration; and (3) paying a fee established by the department by regulation. An application for renewal shall be filed between October 1 and December 31 in each year. The renewal extends the registration for the following calendar year.

**Sec. 10.06.150. Registered office and registered agent.** A corporation shall continuously maintain in this state a registered agent and a registered office. The registered office may be the same as the place of business of the corporation. The registered agent may be either an individual resident of this state whose business office is the same as the registered office, or a domestic or foreign corporation authorized to transact business in this state whose business office is the same as the registered office.

**Sec. 10.06.155. Registration of agent by nonresident with controlling interest.** *[Repealed, Sec. 59 ch 82 SLA 1989.]*

**Sec. 10.06.160. Filing list of registered corporations with superior court; updating and publishing.** *[Repealed, Sec. 35 ch 126 SLA 1994.]*

**Sec. 10.06.165. Change of registered office or agent by corporation.** (a) A corporation may change its registered office, agent, or both, by filing with the department a statement signed by the president or a vice-president including

(1) the name of the corporation;

(2) the address of its registered office;

(3) the address of its new registered office if the registered office is to be changed;

(4) the name of its registered agent;

(5) the name of its new registered agent if the registered agent is to be changed; and

(6) a statement that the change is authorized by resolution of its board of directors.

(b) If the commissioner finds that the statement complies with this chapter, the commissioner shall file it in the commissioner's office. The change becomes effective when the statement is filed.

**Sec. 10.06.170. Change by agent or resignation of agent.** (a) A registered agent of a domestic or foreign corporation may change the location of the agent's office from one address to another in this state. The agent may change the registered office for each corporation for which the person is acting as registered agent by filing in the office of the commissioner a statement setting out (1) the name of the agent; (2) the address of the agent's office before change; (3) the address to which the office is changed; and (4) a list of corporations for which the person is the registered agent. The statement shall be executed by the registered agent in the individual name of the agent or, if the agent is a corporation, it shall be executed by its president or a vice-president. The statement shall be delivered to the commissioner and, if the commissioner finds that the statement complies with this chapter, the commissioner shall file it in the commissioner's office. The change becomes effective when the statement is filed.

(b) A registered agent may resign by filing a written notice and an exact copy of the notice with the commissioner. The written notice of resignation shall set out the latest address of the principal office of the corporation and the names, addresses, and titles of the most recent officers of the corporation known by the agent. The commissioner shall immediately mail a copy of the notice to the corporation at its principal office. The resignation becomes effective 30 days after the filing of the written notice, unless the corporation sooner appoints a successor registered agent, as provided in AS 10.06.165.

**Sec. 10.06.175. Service on corporation.** (a) The registered agent of a corporation is an agent upon whom process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(b) If a corporation fails to appoint or maintain a registered agent in this state, or if its registered agent cannot, with reasonable diligence, be found at the registered office, the commissioner is an agent of the corporation upon whom the process, notice, or demand may be served. A person may serve the commissioner under this subsection by

(1) serving on the commissioner or the designee of the commissioner a copy of the process, notice, or demand, with any papers required by law to be delivered in connection with the service, and a fee established by the department by regulation;

(2) sending to the corporation being served by certified mail a notice that service has been made on the commissioner under this subsection and a copy of the process, notice, or demand and accompanying papers; notice to the corporation shall be sent to

(A) the address of the last registered office of the corporation as shown by the records on file in the office of the commissioner; and

(B) the address, the use of which the person initiating the proceedings knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice; and

(3) filing with the appropriate court or other body, as part of the return of service, the return receipt of mailing and an affidavit of the person initiating the proceedings that this section has been complied with.

(c) The commissioner shall keep a record of processes, notices, and demands served upon the commissioner under this section.

(d) This section does not affect the right to serve process, notice, or demand required or permitted by law to be served upon a corporation in any other manner permitted.

### **ARTICLE 3. FORMATION OF CORPORATIONS**

#### **Section**

- 205. Incorporators**
- 208. Articles of Incorporation**
- 210. Articles of incorporation; optional provisions**
- 213. Delivery of articles of incorporation**
- 215. Disclosure of corporate purposes**
- 218. Effect of issuance of certificate of incorporation**
- 220. Liability for acting as nonexistent corporation**
- 223. Organizational meeting**
- 225. Power of incorporators before director's election**
- 228. Bylaws: adoption, amendment or repeal**
- 230. Bylaws: number of directors and other content**
- 233. Location and inspection of bylaws**

**Sec. 10.06.205. Incorporators.** One or more natural persons at least 18 years of age may act as incorporators of a corporation by signing and delivering to the commissioner an original and an exact copy of the articles of incorporation for the corporation.

**Sec. 10.06.208. Articles of incorporation.** The articles of incorporation must set out

- (1) the name of the corporation;
- (2) the purpose or purposes for which the corporation is organized, which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this chapter;
- (3) if incorporation is after March 24, 1982, the address of its initial registered office and the name of its initial registered agent;
- (4) the name and address of each alien affiliate or a statement that there are no alien affiliates;
- (5) if the corporation is authorized to issue only one class of shares, the total number of shares that the corporation is authorized to issue;
- (6) if the corporation is authorized to issue more than one class of shares, or if a class of shares is to have two or more series,
  - (A) the total number of shares of each class the corporation is authorized to issue, and the total number of shares of each series that the corporation is authorized to issue or of which the board is authorized to fix the number of shares;
  - (B) the designation of each class, and the designation of each series or that the board may determine the designation of any series;
  - (C) the rights, preferences, privileges, and restrictions granted to or imposed on the respective classes or series of shares or the holders of the shares, or that the board, within any limits and restrictions stated, may determine or alter the rights, preferences, privileges, and restrictions granted to or imposed on a wholly unissued class of shares or a wholly unissued series of any class of shares; and
  - (D) if the number of shares of a series is authorized to be fixed by the board, the articles of incorporation may also authorize the board, within the limits and restrictions stated in the articles or stated in a resolution of the board originally fixing the number of shares constituting a series, to increase or decrease, but not below the number of shares of the series then outstanding, the number of shares of a series after the issue of shares of that series; if the number of shares of a series are decreased, the shares constituting the decrease shall resume the status they had before the adoption of the resolution originally fixing the number of shares of the series.

**Sec. 10.06.210. Articles of incorporation; optional provisions.** The articles of incorporation may set out

- (1) any of the following provisions, which are not effective unless expressly provided in the articles:
  - (A) a provision granting, with or without limitations, the power to levy assessments upon the shares or class of shares;
  - (B) a provision removing from shareholders preemptive rights to subscribe to any or all issues of shares or securities;
  - (C) special qualifications of persons who may be shareholders;
  - (D) a provision limiting the duration of the corporation's existence to a specified date;
  - (E) a provision restricting or eliminating the power of the board or of the outstanding shares to adopt, amend, or repeal provisions of the bylaws as provided in AS 10.06.228;
  - (F) a provision requiring, for any corporate action except as provided in AS 10.06.460 and AS 10.06.605, the vote of a larger proportion or of all of the shares of a class or series, or the vote or quorum for taking action of a larger proportion or of all of the directors, than is otherwise required by this chapter;
  - (G) a provision limiting or restricting the business in which the corporation may engage or the powers that the corporation may exercise or both;
  - (H) a provision conferring upon the holder of an evidence of indebtedness, issued or to be issued by the corporation, the right to vote in the election of directors and on any other matters on which shareholders may vote;
  - (I) a provision conferring on shareholders the right to determine the consideration for which shares shall be issued;
  - (J) a provision requiring the approval of the shareholders or the approval of the outstanding shares for a corporate action, even though not otherwise required by this chapter;
  - (K) a provision that one or more classes or series of shares are redeemable as provided in AS 10.06.325;
  - (L) a provision that confers or imposes the powers, duties, privileges, and liabilities of directors on delegates under AS 10.06.450;
  - (M) a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for the breach of fiduciary duty as a director; the articles of incorporation may not eliminate or limit the liability of a director for (i) a breach of a director's duty of loyalty to the corporation or its stockholders; (ii) acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law; (iii) wilful or negligent conduct involved in the payment of dividends or the repurchase of stock from other than

lawfully available funds; or (iv) a transaction from which the director derives an improper personal benefit; the provisions of this paragraph do not eliminate or limit the liability of a director for an act or omission that occurs before the effective date of the articles of incorporation or of an amendment to the articles of incorporation authorized by this paragraph;

(N) if the number of shares of a series is authorized to be fixed by the board, a provision authorizing the board, within the limits and restrictions stated in the articles or stated in a resolution of the board originally fixing the number of shares constituting a series, to increase or decrease, but not below the number of shares of the series then outstanding, the number of shares of a series after the issue of shares of that series; if the number of shares of a series are decreased, the shares constituting the decrease shall resume the status they had before the adoption of the resolution originally fixing the number of shares of the series;

(2) reasonable restrictions upon the right to transfer or hypothecate shares of a class or series, but a restriction is not binding on shares issued before the adoption of the restriction unless the holders of those shares voted in favor of the restriction;

(3) the names and addresses of the persons appointed to act as initial directors;

(4) any other provision not in conflict with this chapter for the management of the business and for the conduct of the affairs of the corporation, including any provision that is required or permitted by this chapter to be stated in the bylaws.

**Sec. 10.06.213. Delivery of articles of incorporation.** An original and an exact copy of the articles of incorporation shall be delivered to the commissioner for processing under AS 10.06.910 and for issuance of a certificate of incorporation.

**Sec. 10.06.215. Disclosure of corporate purposes.** An incorporator presenting articles of incorporation under AS 10.06.213 shall deliver, with the articles, a separate statement of the codes, from the identification codes established under AS 10.06.870, that most closely describe the activities in which the corporation will initially engage.

**Sec. 10.06.218. Effect of issuance of certificate of incorporation.** The corporate existence begins on the issuance of the certificate of incorporation. That certificate is conclusive evidence that all precedent conditions required to be performed by the incorporators have been satisfied and that the corporation has been incorporated. Issuance does not affect the right of the state to bring a proceeding to cancel or revoke the certificate or for involuntary dissolution of the corporation. The doctrines of de jure compliance, de facto corporations, and corporations by estoppel are abolished.

**Sec. 10.06.220. Liability for acting as nonexistent corporation.** (a) Except as provided in (b) of this section persons who assume to act as a corporation for which there has been no issuance of a certificate of incorporation under AS 10.06.218 are jointly and severally liable for debts and liabilities incurred or arising as a result of that action.

(b) The terms of a written contract between a third party and persons acting on behalf of a corporation for which there has been no issuance of a certificate of incorporation may modify or preclude the liability created by this section.

(c) An oral promise, agreement or understanding is not effective to modify or preclude the liability created in (a) of this section.

**Sec. 10.06.223. Organizational meeting.** After the commencement of corporate existence by the issuance of a certificate of incorporation, an organizational meeting of either the incorporators or the board of directors named in the articles of incorporation shall be held at the call of a majority of the incorporators or directors named in the articles of incorporation for the purpose of adopting bylaws, electing directors if none have been named in the articles, electing officers, and transacting such other business as may come before the meeting. The organizational meeting may be held at a designated place, by remote communication, or at a designated place and by remote communication. The designated place may be inside or outside the state. Those calling the meeting shall give at least 20 days' notice of the meeting by mail to each incorporator or director named. The notice shall state the time and place, if the meeting is to be held at a designated place, of the meeting, and whether the meeting will also be held by remote communication.

**Sec. 10.06.225. Power of incorporators before directors' election.** If initial directors have not been named in the articles of incorporation, the incorporator or incorporators may do whatever is necessary and proper to perfect the organization of the corporation until the directors are elected, including the adoption and amendment of bylaws of the corporation and the election of directors.

**Sec. 10.06.228. Bylaws: adoption, amendment or repeal.** Bylaws may be adopted, amended, or repealed either by approval of the outstanding shares or by approval of the board, except as provided in AS 10.06.230. The articles of incorporation may restrict or eliminate the power of either the board or the outstanding shares to adopt, amend, or repeal bylaws.

**Sec. 10.06.230. Bylaws: number of directors and other content.** (a) Unless a provision is contained in the articles, the bylaws must state the number of directors of the corporation or state that the number of directors may not be less than a stated number or more than a stated number, with the exact number of the directors to be fixed, within the limits specified, by approval of the board or the shareholders in the manner provided in the bylaws. If the articles provide for the number of directors, the number of directors may only be changed by an amendment to the articles.

(b) *[Repealed, Sec. 59 ch 82 SLA 1989.]*

(c) After the issuance of shares, a bylaw specifying or changing a fixed number of directors, or the maximum or minimum number of directors or changing from a fixed to a variable board or vice versa, shall be adopted by approval of the outstanding shares.

(d) Notwithstanding (c) of this section, a bylaw or amendment of the articles of incorporation reducing the fixed or minimum number of directors to a number less than five may not be adopted if the number of votes cast against its adoption at a meeting is more than 16-2/3 percent of the outstanding shares entitled to vote.

(e) The bylaws may contain any provision, not in conflict with law or the articles of incorporation, for the management of the business of the corporation and for the conduct of the affairs of the corporation, including

- (1) a provision referred to in AS 10.06.210(2), (3), or (4);
- (2) the time, for meetings held at a designated place, the place, and the manner, including by remote communication, of calling, conducting, and giving notice of meetings of shareholders, directors, and committees;
- (3) the manner of execution, revocation, and use of proxies;
- (4) the qualifications, duties, and compensation of directors; the time of their annual election; and the requirements of a quorum for directors' and committee meetings;
- (5) the appointment and authority of committees of the board;
- (6) the appointment, duties, compensation, and tenure of officers;
- (7) the mode of determination of holders of record of the shares of the corporation;
- (8) the making of annual reports and financial statements to the shareholders.

**Sec. 10.06.233. Location and inspection of bylaws.** Each corporation shall keep at its principal executive office in this state or, if its principal executive office is not in this state, at its principal business office in this state, the original or a copy of its bylaws with amendments to date, which shall be open to inspection by the shareholders at all reasonable times during office hours. If the principal executive office of the corporation is outside this state and the corporation has no principal business office in this state, it shall upon the written request of a shareholder furnish to a shareholder a copy of the bylaws with amendments to date.

## ARTICLE 4. CORPORATE FINANCE

### Section

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**Sec. 10.06.305. Issuance of and requirements for shares.** (a) Subject to the provisions of this chapter, a corporation may issue one or more classes or series of shares or both, with full, limited, or no voting rights and with other rights, preferences, privileges, and restrictions as are stated or authorized in its articles of incorporation. A denial or limitation of voting rights is not effective unless at the time one or more classes or series of outstanding shares or debt securities, singly or in the aggregate, are entitled to full voting rights. A denial or limitation of dividend or liquidation rights is not effective unless at the time one or more classes or series of outstanding shares, singly or in the aggregate, are entitled to unlimited dividend or liquidation rights.

(b) All shares of a class shall have the same voting, conversion, and redemption rights and other rights, preferences, privileges, and restrictions, unless the class is divided into series. If a class is divided into series, all the shares of a series shall have the same voting, conversion, and redemption rights and other rights, preferences, privileges, and restrictions.

**Sec. 10.06.308. Issuance of preferred or special classes of shares.** If authorized by the articles of incorporation, a corporation may issue preferred or special classes of shares

- (1) subject to redemption as provided under AS 10.06.325;
- (2) entitling the holders to cumulative, noncumulative, or partially cumulative dividends;
- (3) having preferences over another class or classes of shares for the payment of dividends;
- (4) having preference in the assets of the corporation over another class of shares upon the voluntary or involuntary liquidation of the corporation;
- (5) convertible into shares of another class or into shares of a series of the same or another class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation.

**Sec. 10.06.310. Issuance of shares in series.** If authorized by the articles of incorporation, the shares of a preferred or special class may be divided into and issued in series. Each series shall be designated to distinguish the shares of the series from the shares of other series and classes.

**Sec. 10.06.313. Variation in rights and preferences of shares.** Any or all of the rights and preferences of a series of a preferred or special class of shares and the variations in the relative rights and preferences between different series may be fixed and determined by the articles of incorporation, but shares of the same class shall be identical except for the following relative rights and preferences as to which there may be variations between series:

- (1) the rate of dividend;
- (2) the price and the terms and conditions on which shares may be redeemed;
- (3) the amount payable upon shares in the event of involuntary liquidation;
- (4) the amount payable upon shares in the event of voluntary liquidation;
- (5) sinking fund provisions for the redemption or purchase of shares;
- (6) the terms and conditions on which shares may be converted, if the shares of a series are issued with the privilege of conversion;
- (7) voting rights, if any.

**Sec. 10.06.315. Series rights and preferences established by board.** If the articles of incorporation expressly vest authority in the board, then, to the extent that the articles have not established series and fixed and determined the variations in the relative rights and preferences between series, the board may divide a class into series and, within the limitations set out in AS 10.06.305 - 10.06.323 and in the articles, fix and determine the relative rights and preferences of the shares of a series.

**Sec. 10.06.318. Manner of establishing series.** If the authority to establish a series is contained in the articles of incorporation, the board shall adopt a resolution setting out the designation of the series and fixing and determining the relative rights and preferences of the series to the extent not fixed and determined by the articles.

**Sec. 10.06.320. Filing of statement before issuance of class or series.** (a) Before the issuance of shares of a class the rights, preferences, privileges, and restrictions of which have been fixed by resolution of the board, or before the issuance of shares of a series established by resolution of the board, the corporation shall file with the commissioner a statement, and an exact copy of the statement, signed by the president or vice-president and the secretary or assistant secretary, setting out

- (1) the name of the corporation;
  - (2) a copy of the resolution determining the rights, preferences, privileges, and restrictions of the wholly unissued class, or of the resolution establishing and designating a series, and fixing and determining the relative rights and preferences of the series;
  - (3) the date of the adoption of the resolution;
  - (4) that the resolution was adopted by the board.
- (b) The commissioner shall process the statement in accordance with AS 10.06.910.

**Sec. 10.06.323. Effect of filing statement.** When the commissioner has filed the statement under AS 10.06.320, the resolution fixing the rights, preferences, privileges, and restrictions of a wholly unissued class of shares or the resolution establishing and designating a series of shares and fixing and determining the relative rights and preferences of the series becomes effective and constitutes an amendment of the articles of incorporation.

**Sec. 10.06.325. Redemption of shares; creation of sinking fund; repurchase agreements.** (a) A corporation may provide in the articles of incorporation for one or more classes or series of

- (1) common shares that are redeemable, in whole or in part,
    - (A) at the option of the corporation; or
    - (B) to the extent and upon the happening of one or more specified events;
  - (2) preferred shares that are redeemable, in whole or in part,
    - (A) at the option of the corporation;
    - (B) to the extent and upon the happening of one or more specified events;
    - (C) at the option of the holder; or
    - (D) upon the vote of at least a majority of the outstanding shares of the class or series to be redeemed.
- (b) Notwithstanding the other provisions of this section, an open-end investment company registered under the United States Investment Company Act of 1940 may, if its articles of incorporation so provide, issue shares that are redeemable at the option of the holder at a price approximately equal to the shares' proportionate interest in the net assets of the corporation, and a shareholder may compel redemption of the shares in accordance with their terms.
- (c) Nothing in this section prevents a corporation from creating a sinking fund or similar provision or entering into an agreement for the redemption or purchase of its shares to the extent permitted by this chapter.
- (d) Except as provided by AS 10.06.385, a redemption of shares shall be made at the price, within the time, and upon the terms and conditions stated in the articles. When the articles permit a partial redemption of a class or series of shares, the articles must prescribe the method of selecting the shares to be redeemed. The method of selection may be
- (1) pro rata;
  - (2) by lot;
  - (3) at the discretion of, or in a manner approved by, the board; or
  - (4) upon other terms and conditions stated in the articles.
- (e) Notwithstanding the provisions of AS 10.06.375, a corporation may not issue redeemable shares unless the shares are redeemable as provided in this section.

**Sec. 10.06.328. Irrevocability of subscriptions for shares.** A subscription for shares of a corporation to be organized is irrevocable for a period of six months, unless the subscription agreement provides otherwise or unless all of the subscribers consent to the revocation of the subscription.

**Sec. 10.06.330. Payment of subscription for shares.** Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at the time or in installments as determined by the board. A call made by the board for payment on subscriptions shall be uniform for shares of the same class or shares of the same series.

**Sec. 10.06.333. Remedies for default in payment.** In case of default in the payment of an installment or call when payment is due, the corporation may proceed to collect the amount due as any debt due the corporation. The bylaws may prescribe other remedies for failure to pay installments or calls that become due. No remedy working a forfeiture of a subscription, or of the amounts paid on a subscription, may be declared against a subscriber unless the amount due remains unpaid for a period of 20 days after written demand has been made. If mailed, written demand is considered to be made when it is deposited in the United States mail in a sealed envelope addressed to the subscriber at the last post office address known to the corporation, with postage prepaid. On a sale of shares by reason of forfeiture, the excess of proceeds realized over the amount due and unpaid on the shares shall be paid to the delinquent subscriber or to the legal representative of the subscriber.

**Sec. 10.06.335. Consideration for shares.** Shares may be issued for consideration expressed in dollars fixed by the board unless the articles of incorporation reserve to the shareholders the right to fix the consideration. If this right is reserved as to any shares, the shareholders shall, before the issuance of the shares, fix the consideration to be received for the shares by approval of the outstanding shares.

**Sec. 10.06.338. Payment for shares.** (a) Consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. Unless otherwise provided in the articles of incorporation, when payment of the consideration for shares is received by the corporation, the shares are considered fully paid and nonassessable.

(b) A promissory note or future service does not constitute payment or part payment for shares of a corporation.

**Sec. 10.06.340. Judgment of board or shareholders as to value of consideration.** In the absence of fraud in the transaction, the judgment of the board or the shareholders as to the value of the consideration received for shares is conclusive.

**Sec. 10.06.343. Share rights and options.** Subject to a provision in its articles, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders of the rights or options to purchase from the corporation shares of any class or classes. These rights or options shall be evidenced in the manner the board approves and, subject to the provisions of the articles, must set out the terms upon which, the time within which, and the price at which the shares may be purchased from the corporation upon the exercise of the right or option. If the rights or options are to be issued to directors, officers, or employees of the corporation or of a subsidiary of the corporation and not to the shareholders generally, their issuance shall be authorized by the approval of the outstanding shares or must be consistent with a plan so approved or ratified. In the absence of fraud in the transaction, the judgment of the board as to the adequacy of the consideration received for the rights or options is conclusive.

**Sec. 10.06.345. Expenses of organization, reorganization, and financing.** The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by the corporation out of the consideration received by the corporation in payment for its shares without rendering the shares not fully paid or assessable.

**Sec. 10.06.348. Certificates representing shares.** Except as otherwise provided under AS 10.06.349, the shares of a corporation shall be represented by certificates signed by the president or vice-president and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile of the seal. The signatures of the president or vice-president and the secretary or assistant secretary upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent or registered by a registrar, other than the corporation itself or an employee of the corporation. If an officer who has signed or whose facsimile signature has been placed on the certificate ceases to be an officer before the certificate is issued, the certificate may be issued by the corporation with the same effect as if the officer were an officer at the date of its issue.

**Sec. 10.06.349. Shares without certificates.** (a) Unless the articles or bylaws provide otherwise, the board of directors may authorize the issuance without certificates of some or all of the corporation's classes or series of shares. The authorization does not affect shares that are already represented by certificates until the certificates are surrendered to the corporation.

(b) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall send the shareholder a written statement giving the information required by AS 10.06.350 to be on certificates, and, if applicable, the information required by AS 10.06.424(c) to be disclosed to the shareholder when there is no certificate.

**Sec. 10.06.350. Information required to be stated on certificate.** (a) Each certificate representing shares issued by a corporation authorized to issue shares of more than one class shall set out on the face or back of the certificate, or state that the corporation will furnish to a shareholder upon request and without charge, a full or summary statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued and, if the corporation is authorized to issue preferred or special class in series, the variations in the relative rights and preferences between the shares of each series so far as they have been fixed and determined and the authority of the board to fix and determine the relative rights and preferences of subsequent series.

(b) Each certificate representing shares shall state upon its face

- (1) that the corporation is organized under the laws of the state;
- (2) the name of the person to whom issued;
- (3) the number and class of shares, and the designation of the series, if any, that the certificate represents.

**Sec. 10.06.353. Full payment required for share.** A share with or without a certificate may not be issued until the share is fully paid.

**Sec. 10.06.355. Issuance of fractional shares or scrip.** (a) A corporation may issue a fractional share, and, by action of its board, may issue, instead of a fractional certificate, scrip in registered or bearer form that entitles the holder to receive a full share upon the surrender of the scrip aggregating a full share.

(b) A fractional share entitles the holder to exercise voting rights, to receive dividends, and to participate in the assets of the corporation in the event of liquidation. Unless otherwise provided in the scrip, scrip does not entitle the holder to exercise voting rights, to receive dividends, or to participate in the assets of the corporation in the event of liquidation.

(c) The board may issue scrip subject to the condition that it is void if not exchanged for full shares before a specified date, or subject to the condition that the shares for which the scrip is exchangeable may be sold by the corporation and the proceeds distributed to the holders of that scrip, or subject to other conditions that the board considers advisable.

**Sec. 10.06.356. Shares held by nominees.** (a) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder.

(b) The procedure may set out

- (1) the types of nominees to whom it applies;
- (2) the rights or privileges that the corporation recognizes in a beneficial owner;
- (3) the manner in which the procedure is selected by the nominee;
- (4) the information that must be provided when the procedure is selected;
- (5) the period when selection of the procedure is effective; and
- (6) other aspects of the rights and duties created.

**Sec. 10.06.358. Distributions; conditions; financial statements and determinations.** (a) A corporation or a subsidiary of the corporation may not make a distribution to the corporation's shareholders as defined in AS 10.06.990 unless

(1) the amount of the retained earnings of the corporation immediately before the distribution equals or exceeds the amount of the proposed distribution; or

(2) immediately after giving effect to the distribution the

(A) sum of the assets of the corporation, exclusive of goodwill, capitalized research and development expenses, evidences of debts owing from directors or officers or secured by the corporation's own shares, and deferred charges, would be at least equal to one and one-fourth times its liabilities, not including deferred taxes, deferred income, and other deferred credits; and

(B) current assets of the corporation would be at least equal to its current liabilities or, if the average of the earnings of the corporation before taxes on income and before interest expense for the two preceding fiscal years was less than the average of the interest expense of the corporation for those fiscal years, at least equal to one and one-fourth its current liabilities.

(b) For purposes of this section,

(1) in determining the amount of the assets of the corporation, profits derived from an exchange of assets may not be included unless the assets received are currently realizable in cash;

(2) "current assets" may include net amounts that the board has determined in good faith may reasonably be expected to be received from customers during the 12-month period used in calculating current liabilities under existing contractual relationships obligating the customers to make fixed or periodic payments during the term of the contracts after in each case giving effect to future costs not then included in current liabilities but reasonably expected to be incurred by the corporation in performing the contracts.

(c) For the purposes of this chapter, the amount of a distribution payable in property shall be determined on the basis of the value at which the property is carried on the corporation's financial statements in accordance with this section.

(d) Only a corporation that classifies its assets as current assets and fixed assets in accordance with this section is governed by (a)(2)(B) of this section.

(e) For the purposes of this section, the board of directors may base a determination that a distribution is not prohibited either on financial statements prepared in accordance with generally accepted accounting principles or on the basis of accounting practices and principles that are fair and reasonable in the circumstances.

(f) Financial statements and determinations prepared or arrived at in accordance with generally accepted accounting principles are fair and reasonable. The fair and reasonable quality of statements and determinations prepared under other practices and principles shall be proved by the corporation.

**Sec. 10.06.360. Prohibited distribution; inability to meet maturing liabilities.** A corporation or subsidiary of a corporation may not make a distribution to the corporation's shareholders if the corporation or the subsidiary making the distribution is, or as a result of the distribution would be, likely to be unable to meet its liabilities as they mature.

**Sec. 10.06.363. Prohibited distribution on junior shares; liquidation preference.** A corporation or subsidiary of a corporation may not make a distribution to the corporation's shareholders on any shares of its stock of a class or series that are junior to outstanding shares of another class or series with respect to distribution of assets on liquidation if, after giving effect to the distribution, the excess of its assets, exclusive of goodwill, capitalized research and development expenses, evidences of debts owing from directors or officers or secured by the corporation's own shares, and deferred charges, over its liabilities, not including deferred taxes, deferred income and other deferred credits, would be less than the liquidation preference of all shares having a preference on liquidation over the class or series to which the distribution is made.

**Sec. 10.06.365. Prohibited distribution on junior shares; relationship to retained earnings.** A corporation or a subsidiary of a corporation may not make a distribution to the corporation's shareholders on any shares of its stock of a class or series that are junior to outstanding shares of another class or series with respect to payment of dividends unless the amount of the retained earnings of the corporation immediately before the distribution equals or exceeds the amount of the proposed distribution plus the aggregate amount of the cumulative dividends in arrears on all shares having a preference with respect to payment of dividends over the class or series to which the distribution is made.

**Sec. 10.06.368. Exception for purchase or redemption of shares of deceased shareholder.** The provisions of AS 10.06.358, 10.06.360, 10.06.363, and 10.06.365 do not apply to a purchase or redemption of shares of a deceased shareholder from the proceeds of insurance on the life of the shareholder in excess of the total amount of all premiums paid by the corporation for the insurance, in order to carry out the provisions of an agreement between the corporation and the shareholder to purchase or redeem the shares upon the death of the shareholder.

**Sec. 10.06.370. Inapplicability to regulated investment company.** The provisions of AS 10.06.358 do not apply to a dividend declared by a regulated investment company, as defined in the United States Internal Revenue Code, to the extent that the dividend is necessary to maintain the status of the corporation as a regulated investment company under the provisions of that code. The provisions of this chapter do not apply to a purchase or redemption of shares redeemable at the option of the holder by a registered open-end investment company under the United States Investment Company Act of 1940, so long as the right of redemption remains unsuspended under the provisions of that statute and the articles and bylaws of the corporation.

**Sec. 10.06.373. Share dividends: restrictions.** A dividend payable in shares of a class may not be paid to the holders of shares of another class unless authorized by the articles of incorporation or unless payment is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made.

**Sec. 10.06.375. Additional restrictions in articles, bylaws, indentures, or agreements.** Nothing in this chapter prohibits additional restrictions upon the declaration of dividends or the purchase or redemption of a corporation's

own shares by provision in the articles or bylaws of the corporation or in any indenture or other agreement entered into by the corporation.

**Sec. 10.06.378. Liability of shareholders receiving prohibited distributions; suit against shareholders.** (a) A shareholder who receives a distribution prohibited by this chapter with knowledge of facts indicating the impropriety of the distribution is liable to the corporation for the benefit of all of the creditors or shareholders entitled to institute an action under (b) of this section for the amount received by the shareholder with interest at the legal rate on judgments until paid. The liability of the shareholder under this subsection may not exceed the liabilities of the corporation owed to nonconsenting creditors at the time of the violation and the injury suffered by nonconsenting shareholders.

(b) Suit may be brought in the name of the corporation to enforce the liability to

(1) creditors arising under (a) of this section for a violation of AS 10.06.358 or 10.06.360 against any or all shareholders liable by any one or more creditors of the corporation whose debts or claims arose before the time of the distribution to shareholders and who have not consented to the distribution, whether or not they have reduced their claims to judgment; or

(2) shareholders arising under (a) of this section for a violation of AS 10.06.363 or 10.06.365 against any or all shareholders liable by any one or more holders of preferred shares outstanding at the time of the distribution who have not consented to the distribution, without regard to the provisions of AS 10.06.435.

(c) A shareholder sued under this section may implead all other shareholders liable under this section and may compel contribution, either in that action or in an independent action against shareholders not joined in that action.

(d) This section does not affect the liability that a shareholder may have under other applicable law.

**Sec. 10.06.380. Identification of distribution in notice to shareholders.** A distribution other than one chargeable to retained earnings shall be identified in a notice to shareholders as being made from a source other than retained earnings, and shall include a statement of the accounting treatment of the distribution. The notice shall accompany the distribution or shall be given within three months after the end of the fiscal year in which the distribution is paid.

**Sec. 10.06.383. Inapplicability to winding up and involuntary or voluntary dissolution.** AS 10.06.305 - 10.06.390 do not apply in a proceeding for winding up and dissolution under AS 10.06.605 - 10.06.678.

**Sec. 10.06.385. Redemption of shares at the option of corporation; manner.** (a) A corporation may redeem any or all shares that are redeemable at its option by

(1) giving notice of redemption; and

(2) payment or deposit of the redemption price of the shares as provided in its articles of incorporation or deposit of the redemption price in accordance with (d) of this section.

(b) Subject to any provisions in its articles with respect to the notice required for redemption of shares, the corporation may give notice of the redemption of any or all shares subject to redemption by publishing a notice of redemption in a newspaper of general circulation in the judicial district in which the principal executive office of the corporation is located at least once a week for two successive weeks, beginning not earlier than 60 nor later than 20 days before the date fixed for redemption. The notice of redemption must set out the following:

(1) the class or series of shares or part of any class or series of shares to be redeemed;

(2) the date fixed for redemption;

(3) the redemption price; and

(4) the place at which the shareholders may obtain payment of the redemption price upon surrender of their share certificates or uncertificated shares.

(c) If the corporation gives notice of redemption under (b) of this section, it shall also mail a copy of the notice of redemption to each holder of record of shares to be redeemed as of the date of mailing or record date fixed in accordance with AS 10.06.408, addressed to the holder at the address of the holder appearing on the books of the corporation or given by the holder to the corporation for the purpose of notice not earlier than 60 nor later than 20 days before the date fixed for redemption. Failure to comply with this subsection does not invalidate the redemption of the shares.

(d) On or before the date fixed for redemption of redeemable shares, a corporation may deposit with a bank or trust company in this state as a trust fund a sum sufficient to redeem the shares called on the date fixed for redemption, with irrevocable instructions to the bank or trust company to publish a notice of redemption, or to complete the publication if begun, and to pay, on and after or before the date fixed for redemption, the redemption price of the shares to holders of the shares upon the surrender of their share certificates or uncertificated shares. From and after the date of the deposit with the bank or trust company, although before the date fixed for redemption, the shares called for redemption are redeemed and dividends on those shares cease to accrue after the date fixed for redemption. The deposit constitutes full payment of the shares to their holders and from and after the date of the

deposit the shares are no longer outstanding and the holders of the shares cease to be shareholders with respect to the shares and have no rights with respect to the shares except the right to receive from the bank or trust company payment of the redemption price of the shares without interest upon surrender of the certificates for the shares or the uncertificated shares, and any right to convert the shares that may exist and continue for a period fixed by the terms of the shares.

**Sec. 10.06.388. Acquisition of corporation's own shares; reissuance or retirement.** (a) When a corporation purchases or redeems or otherwise acquires its own shares, the shares are restored to the status of authorized but unissued shares unless the articles prohibit their reissuance.

(b) If the articles prohibit the reissuance of shares upon their acquisition by the corporation, then upon the acquisition of those shares the authorized number of shares of the class and series, if any, to which the shares belonged is reduced by the number of shares acquired and the articles shall be amended to reflect the reduction in authorized shares. If all of the authorized shares of a class or series are acquired and their reissue is prohibited by the articles of incorporation, then the articles shall also be amended to eliminate any statement of rights, preferences, privileges, and restrictions relating solely to that class or series. Articles of amendment shall be filed within 60 days of the acquisition of the shares in accordance with the requirements of AS 10.06.512 - 10.06.514. Approval by the outstanding shares is not required to adopt such articles of amendment.

**Sec. 10.06.390. Capitalization of retained earnings.** The paid-in capital of a corporation may be increased by resolution of the board directing that all or a part of the retained earnings of the corporation be transferred to the paid-in capital account.

## ARTICLE 5. SHAREHOLDERS AND RECORDS

### Section

- 405. Meetings of shareholders
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- 438. Liability of shareholders, subscribers, and others arising out of shares

**Sec. 10.06.405. Meetings of shareholders.** (a) Meetings of shareholders shall be held at a place inside or outside the state, by remote communication, or at a place inside or outside the state and by remote communication, as provided in the bylaws. In the absence of a provision in the bylaws, meetings shall be held at the direction of the board or at the registered office of the corporation.

(b) An annual meeting of the shareholders shall be held at the time as provided in the bylaws or, if the bylaws do not set a time, at a time determined by the board. If the annual meeting is not held within any 13-month period, the superior court may on the application of a shareholder summarily order a meeting to be held.

(c) Special meetings of the shareholders may be called by the board, the chairman of the board, the president, the holders of not less than one-tenth of all the shares entitled to vote at the meeting, or other persons as may be authorized in the articles of incorporation or the bylaws.

(d) The failure of a corporation to hold an annual meeting at the time stated in or fixed under its bylaws does not cause the corporation to forfeit its status, does not cause a dissolution of the corporation, and does not affect the validity of corporate action.

**Sec. 10.06.408. Closing of transfer books and fixing record date.** (a) To determine the shareholders entitled to notice of or to vote at a meeting of shareholders or an adjournment of a meeting, or to determine the shareholders entitled to receive payment of a dividend, or to determine the shareholders for any other proper purpose, the board of a corporation may provide that the stock transfer books shall be closed for a stated period not exceeding 70 days. If the stock transfer books are closed to determine shareholders entitled to notice of or to vote at a meeting of shareholders, they shall be closed for at least 20 days immediately preceding the meeting.

(b) Instead of closing the stock transfer books, the bylaws or, in the absence of an applicable bylaw, the board may fix a date as the record date for the determination of shareholders. This record date may not be more than 60 days and, in case of a meeting of shareholders, not less than 20 days before the date on which the particular action requiring the determination of shareholders is to be taken. If the stock transfer books are not closed and a record date is not fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders or for the determination of shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board declaring the dividend is adopted, is the record date for the determination of shareholders. When a determination of shareholders entitled to vote at a meeting of shareholders has been made as provided in this section, the determination applies to an adjournment of the meeting of shareholders.

**Sec. 10.06.410. Notice of shareholders' meetings.** (a) Written or printed notice stating the place, if the meeting will be held at a designated place, the manner, including holding the meeting by remote communication, the day, and the hour of the meeting, and, in the case of a special meeting, the purpose for which the meeting is called, shall be delivered not less than 20 or more than 60 days before the date of the meeting, either personally, by mail, or by electronic transmission under (b) of this section, by or at the direction of the president, the secretary, the officer, or persons calling the meeting, to each shareholder of record entitled to vote at the meeting. If mailed, the notice is considered delivered when deposited with postage prepaid in the United States mail addressed to the shareholder at the address of the shareholder as it appears on the stock transfer books of the corporation, or, if the shareholder has filed with the secretary of the corporation a written request that notice be mailed to a different address, addressed to the shareholder at the new address. An affidavit of the secretary or other person giving the notice or of a transfer agent of the corporation that the notice required by this section has been given is prima facie evidence of the facts stated in the affidavit. If attendance of the meeting by remote communication is permitted, the notice must state the method of remote communication by which a shareholder or a proxy holder is considered present in person at the meeting and by which the shareholder or proxy holder may vote.

(b) Notice under (a) of this section may be given by electronic transmission if the shareholder authorizes delivery by electronic transmission. Authorization must be in the form of a writing signed by the shareholder or an electronic transmission that sets out or is submitted with information demonstrating that the shareholder authorized the electronic transmission. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall be prima facie evidence of the facts stated in the affidavit. Notice by electronic transmission shall be considered given

(1) by facsimile telecommunication when directed to a number at which the shareholder has consented to receive notice;

(2) by electronic mail when directed to an electronic mail address at which the shareholder has consented to receive notice;

(3) by a posting on an electronic network together with a separate notice of the specific posting to the shareholder on the later of

(A) the posting; or

(B) the giving of separate notice; or

(4) by any other form of electronic transmission when directed to the shareholder.

**Sec. 10.06.411. Delivery of information and items to shareholders.** (a) A corporation shall be considered to have delivered an annual report, proxy statement, or other information to shareholders of record who reside at the same physical location and share an address if the corporation delivers an annual report, proxy statement, or other information to the shared address; the corporation addresses the annual report, proxy statement, or other information to the shareholders as a group (for example, "ABC Corporation Shareholders," "Jane Doe and Household," or "the Smith Family") or to each of the shareholders individually (for example, "John Doe and Richard Jones"); and

(1) each shareholder consents in writing to delivery of one copy of the annual report, proxy statement, or other information to the shareholder's shared address, and the corporation has notified each shareholder of the duration of that shareholder's consent, explained how the shareholder can revoke the consent, and explained that the corporation will begin sending an individual copy of the annual report, proxy statement, or other information to the shareholder within 30 days after revocation of the shareholder's consent; or

(2) all of the following conditions are met:

(A) the shareholder has the same last name as the other shareholders at the shared address or the corporation reasonably believes that the shareholders are members of the same family;

(B) the corporation has sent the shareholder a notice at least 60 days before the corporation begins to rely on this section concerning delivery of annual reports, proxy statements, or other information to that shareholder; the notice must

(i) state that only one copy of the annual report, proxy statement, or other information will be delivered to the shared address unless the corporation receives contrary instructions from the shareholder;

(ii) include a toll-free telephone number or be accompanied by a reply form that is pre-addressed with postage provided that the shareholder can use to notify the corporation that the shareholder wishes to receive a separate copy of the annual report, proxy statement, or other information;

(iii) state that the corporation will begin sending individual copies to a shareholder within 30 days after the shareholder notifies the corporation that the shareholder wishes to receive a separate copy of the annual report, proxy statement, or other information; and

(iv) include the following statement or a similar clear and understandable statement in boldface type within the text of the notice or on the envelope containing the notice, or, in the case of a notice mailed with other shareholder communications, both within the text of the notice and on the envelope containing the notice: "Important Notice Regarding Delivery of Shareholder Documents";

(C) the corporation has not received notice from the shareholder indicating that the shareholder wishes to continue to receive an individual copy of the annual report, proxy statement, or other information; and

(D) the corporation delivers the annual report, proxy statement, or other information to a post office box or to a residential street address; the corporation may assume a street address is a residential street address unless the corporation has information that indicates that the address is a business address.

(b) If a shareholder revokes consent to delivery of one copy of the annual report, proxy statement, or other information to a shared address or notifies the corporation that the shareholder wishes to receive an individual copy of the annual report, proxy statement, or other information, the corporation shall begin sending individual copies to that shareholder within 30 days after the corporation receives the revocation of consent or notice.

(c) A corporation is not required to send a notice of a shareholders' meeting, an annual report, a payment, a notice of a payment, or a proxy statement to a shareholder until the shareholder provides the corporation with written notice of the shareholder's current address if materials set out in (1) or (2) of this subsection have been sent by first class mail to the shareholder's address and have been returned as undeliverable:

(1) an annual report and proxy statements for two consecutive annual shareholders' meetings;

(2) during a period of at least 12 months, at least two payments of dividends or interest on securities, or at least two dividend reinvestment confirmations.

(d) For purposes of (a) of this section, "address" means a street address, a post office box number, an electronic mail address, a facsimile telephone number, or another similar destination to which paper or electronic documents are delivered, unless otherwise provided in this section. If the corporation has reason to believe that the address is a street address of a multi-unit building, the address must include the unit number.

**Sec. 10.06.413. Voting list; liability.** (a) At least 20 days before each meeting of shareholders, the officer or agent having charge of the stock transfer books for shares of a corporation shall make a list of the shareholders entitled to vote at the meeting or an adjournment of the meeting arranged in alphabetical order, with the address of and the number of shares held by each shareholder. The list shall be kept on file at the registered office of the corporation and is subject to inspection by a shareholder or the agent or attorney of a shareholder at any time during usual business hours for a period of 20 days before the meeting. The list shall also be produced and kept open at the time and place of the meeting and subject to the inspection of a shareholder during the meeting, or the list shall be kept available for the meeting on a reasonably accessible electronic network where the information required to gain access to the list is provided with the notice of the meeting. If the corporation makes the list available on an electronic network, the corporation may take reasonable steps to ensure that the information is available only to shareholders of the corporation. The original stock transfer books are prima facie evidence as to the shareholders who are entitled to examine the list or transfer books or to vote at a meeting of shareholders.

(b) Failure to comply with the requirements of this section does not affect the validity of the action taken at the meeting.

(c) An officer or agent having charge of the stock transfer books who fails to prepare the list of shareholders, keep it on file for a period of 20 days, or produce and keep it open for inspection at the meeting, as provided in this section, is liable for a penalty of \$5,000 and shall pay this sum to a shareholder who makes a written request for performance of the duties imposed by this section.

**Sec. 10.06.415. Quorum of shareholders.** (a) Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person, by remote communication, or by proxy, constitutes a quorum at a meeting of shareholders, but in no event may a quorum consist of less than one-third of the shares

entitled to vote at the meeting. If a quorum is present, the affirmative vote of the majority of shares represented at the meeting and entitled to vote on the subject matter is the act of the shareholders, unless the vote of a greater number or voting by classes is required by this chapter, the articles of incorporation, or the bylaws.

(b) Shareholders present at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum, if any action taken other than adjournment is approved by at least a majority of shares required to constitute a quorum.

**Sec. 10.06.418. Proxies.** (a) Each person entitled to vote shares may authorize another person or persons to act by proxy with respect to the shares. A proxy purporting to be executed in accordance with the provisions of this chapter is presumed valid.

(b) A proxy is not valid after the expiration of 11 months from the date of the proxy unless it qualifies as an irrevocable proxy under (e) of this section. A proxy continues in full force and effect until revoked by the person executing it, except as provided in this section. A person may revoke a proxy by a writing delivered to the corporation stating that the proxy is revoked, by a subsequent proxy executed by the person executing the prior proxy and delivered to the corporation, or by attendance at the meeting and voting in person, or by remote communication, by the person executing the proxy. The dates contained on the forms of proxy presumptively determine the order of execution, regardless of the postmark dates on the envelopes in which the proxies are mailed.

(c) A proxy is not revoked by the death or incapacity of the maker unless, before the vote is counted, written notice of the death or incapacity is received by the corporation.

(d) Except as provided otherwise by written agreement of the parties, the record holder of shares held by a person as pledgee or otherwise as security or that belong to another shall, upon demand and payment of necessary expenses, issue a proxy to vote to the pledgor or to the owner of the shares.

(e) Notwithstanding (c) of this section, a proxy that states that it is irrevocable is irrevocable for the period specified in the proxy when it is held by the following or a nominee of the following:

- (1) a person to whom the shares are pledged for the performance of an obligation or the payment of a debt;
- (2) a person who has purchased, agreed to purchase, or holds an option to purchase the shares or a person who has sold a portion of the shares of the person in the corporation to the maker of the proxy;
- (3) a person who has contracted to perform services as an employee of the corporation, if a proxy is required by the contract of employment and if the proxy states that it was given in consideration of the contract of employment, the name of the employee, and the period of employment contracted for;
- (4) a person designated by or under an agreement under AS 10.06.425; or
- (5) a beneficiary of a trust with respect to shares held by the trust.

(f) Notwithstanding the period of irrevocability specified in a proxy, the proxy becomes revocable when the pledge is redeemed, the option or agreement to purchase is terminated or the seller no longer owns any shares of the corporation or dies, the period of employment provided for in the contract of employment has terminated, the agreement under AS 10.06.425 has terminated, or the person ceases to be a beneficiary of the trust. In addition, a proxy may be made irrevocable if it is given to secure the performance of a duty or to protect a title, either legal or equitable, until the happening of events that, by its terms, discharge the obligations secured by it.

(g) Notwithstanding a provision in a proxy that makes the proxy irrevocable, a proxy is revoked when the shares are transferred unless the transferee knows about the provision or the proxy, or the irrevocability or notice of the proxy appears on a certificate representing the shares.

**Sec. 10.06.420. Voting of shares.** (a) An outstanding share, regardless of class, is entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except as may be otherwise provided in the articles of incorporation. If the articles provide for more or less than one vote for any share, on any matter, every reference in this chapter to a majority or other proportion of shares shall refer to a majority or other proportion of the votes entitled to be cast.

(b) Shares held by the corporation, or shares held by another corporation if a majority of the shares entitled to vote for the election of directors of the other corporation is held by the corporation, may not be voted at a meeting or counted in determining the total number of outstanding shares at a given time.

(c) A shareholder may vote in person, by remote communication, by proxy executed in writing by the shareholder or by the authorized attorney-in-fact of the shareholder, or by proxy executed by electronic transmission by the shareholder or by the authorized attorney-in-fact of the shareholder. A proxy executed by electronic transmission must

(1) be directed to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization, or similar agent that is authorized by the person who will be the holder of the proxy to receive the transmission; and

(2) include information that demonstrates that the shareholder authorized the transmission.

(d) Unless the articles of incorporation provide otherwise, at an election for directors, each shareholder entitled to vote at the election may vote, in person, by remote communication, or by proxy, the number of shares owned by the

shareholder for as many persons as there are directors to be elected and for whose election the shareholder has a right to vote, or to cumulate votes by giving one candidate votes equal to the number of directors multiplied by the number of shares of the shareholder, or by distributing votes on the same principle among any number of candidates. The rights created by this subsection may not be limited by amendment to the articles when the votes cast against the amendment would be sufficient to elect one director if voted cumulatively at an election of the entire board.

(e) Except as prohibited in this subsection, shares standing in the name of another corporation may be voted by the officer, agent, or proxy as the bylaws of the other corporation may prescribe, or, in the absence of a provision, as the board of the other corporation may determine. The shares of a corporation may not be voted if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for the directors of the second corporation.

(f) Shares held by an administrator, executor, guardian, or conservator may be voted by that person, in person, by remote communication, or by proxy, without a transfer of the shares into the name of that person. Shares standing in the name of a trustee may be voted by the trustee, in person, by remote communication, or by proxy, but a trustee is not entitled to vote shares held by the trustee without a transfer of the shares into the name of the trustee.

(g) Shares standing in the name of a receiver may be voted by the receiver, and shares held by or under the control of a receiver may be voted by the receiver without a transfer of the shares into the name of the receiver if authority to transfer the shares is contained in an appropriate court order by which the receiver was appointed.

(h) A shareholder whose shares are pledged is entitled to vote the shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee is entitled to vote the shares so transferred.

(i) Beginning on the date on which written notice of redemption of redeemable shares has been mailed to the holders of the shares and a sum sufficient to redeem the shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders of the shares upon surrender of the certificates for the shares or the uncertificated shares, the shares may not vote on any matter and are not considered to be outstanding shares.

(j) If a corporation adopts rules to provide for voting by proxy executed by electronic transmission or by a ballot cast by electronic transmission, the rules must provide that all legally qualified proxies and ballots cast by electronic transmission may be voted in the same manner as the corporation's proxy or ballot.

(k) The board may permit shareholders and shareholders' proxy holders to participate in meetings of the shareholders by remote communication using one or more methods of remote communication, whether the meetings are held at a designated place, by remote communication, or at a designated place and by remote communication. The board may adopt guidelines and procedures that apply to participation in shareholder meetings by remote communication and that the board considers appropriate. The board may limit participation to specified locations or means of communication. A shareholder participating in a meeting by remote communication permitted by the board is considered to be present in person at the meeting.

**Sec. 10.06.421. Corporation's acceptance of certain documents.** (a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the document and give it effect as the act of the shareholder.

(b) If the name signed on a document does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the document and give it effect as the act of the shareholder if

(1) the shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(2) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the document;

(3) the name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the document;

(4) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation or the signatory's authority to sign for the shareholder has been presented with respect to the document; or

(5) two or more persons are the shareholder as cotenants or fiduciaries, the name signed purports to be the name of at least one of the coowners, and the person signing appears to be acting on behalf of all the coowners.

(c) The corporation is entitled to reject a document if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has a reasonable basis to doubt the validity of the signature on the document or the signatory's authority to sign for the shareholder.

(d) The corporation and its officer or agent who accepts or rejects a document in good faith and in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a document under this section is valid unless a court of competent jurisdiction determines otherwise.

(f) In this section, "document" means vote, consent, waiver, or proxy appointment.

**Sec. 10.06.423. Actions taken without meeting; written consent; revocation of consent.** (a) Unless prohibited by the articles or the bylaws, whenever under this chapter shareholders are required or permitted to take action by vote, the action may be taken without a meeting by written consents, identical in content, setting out the action taken, signed by the holders of all outstanding shares entitled to vote on the action.

(b) A shareholder giving a written consent, or the shareholder's proxy holder, or a transferee of the shares or a personal representative or proxy holder of the shareholder, may only revoke the consent by a writing received by the corporation before the time that written consents of the shares required to authorize the proposed action have been filed with the secretary of the corporation. The revocation is effective upon receipt by the secretary of the corporation.

**Sec. 10.06.424. Shareholder agreements.** (a) The shareholders of a corporation may enter into an agreement among all the shareholders to impose restrictions on the transfer or registration of shares of the corporation to

(1) maintain the corporation's status, including election of S corporation status under 26 U.S.C. (Internal Revenue Code), when the status depends on the number or identity of its shareholders; in this paragraph, "S corporation" has the meaning given in 26 U.S.C. 1361;

(2) preserve exemptions under federal or state securities laws;

(3) ensure that shareholders will be able to control who may participate in the corporation's business;

(4) ensure that shareholders who wish to retire will be able to liquidate their investments without disrupting corporate affairs;

(5) ensure that estates of deceased shareholders will be able to liquidate the decedents' shares in the corporation;

(6) obligate the shareholder first to offer to the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(7) obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;

(8) require the corporation, the holder of any class of its shares, or another person, to approve the transfer of restricted shares, if the requirement is not manifestly unreasonable; and

(9) accomplish another reasonable purpose.

(b) The shareholders of a corporation may enter into an agreement among all of the shareholders to provide for the selection of directors and officers.

(c) The existence of a shareholders' agreement that is consistent with this section shall be noted conspicuously on the front or back of each stock certificate together with a statement indicating that the agreement, or a copy of the agreement, is on file at the principal office of the corporation and that the corporation will allow inspection of the agreement or furnish a copy of the agreement without charge. If the share has been issued under AS 10.06.349 without a certificate, a statement that discloses the existence of the shareholders' agreement shall be sent within a reasonable time to the shareholder.

(d) Shares issued before compliance with (c) of this section, if acquired by a person without knowledge of the shareholders' agreement, are not subject to the shareholders' agreement.

(e) A shareholders' agreement may not alter or waive AS 10.06.350, 10.06.358, 10.06.360, 10.06.430, 10.06.438, 10.06.544, 10.06.570, 10.06.633, 10.06.648, or 10.06.653.

(f) In this section, "shares" includes a security that is convertible into shares or that carries a right to subscribe for or acquire shares.

**Sec. 10.06.425. Voting trusts and agreements among shareholders.** (a) Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a copy of the agreement with the corporation at its registered office, and by transferring their shares to the trustee or trustees for the purpose of the agreement. The trustee or trustees shall keep a record of the holders of voting trust certificates evidencing a beneficial interest in the voting trust, giving the names and addresses of all the holders and the number and class of the shares for which the voting trust certificates are issued, and shall deposit a copy of the record with the corporation at its registered office. The copies of the voting trust agreement and the record deposited with the corporation are subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation under AS 10.06.430, and the copies of the agreement and the record are subject to examination by a holder of record of voting trust certificates, either in person or by agent or attorney, at a reasonable time for a proper purpose. This subsection does not invalidate an irrevocable proxy complying with AS 10.06.418(e).

(b) Shareholders may enter into a voting agreement or any other agreement if the agreement is consistent with this chapter.

**Sec. 10.06.428. Shareholders' preemptive rights.** (a) Except to the extent limited or denied by this section or by the articles of incorporation, shareholders have a preemptive right to acquire unissued shares or securities convertible into such shares or carrying a right to subscribe to or acquire shares.

(b) Unless otherwise provided in the articles of incorporation,

(1) there is no preemptive right

(A) to acquire any shares issued to directors, officers, or employees if approved by the outstanding shares or if authorized by and consistent with a plan previously approved by the outstanding shares; or

(B) to acquire shares sold for consideration other than for cash;

(2) holders of shares of a class that is preferred or limited as to dividends or assets are not entitled to a preemptive right;

(3) holders of shares of common stock are not entitled to a preemptive right to shares of a class that is preferred or limited as to dividends or assets or to any obligations, unless convertible into shares of common stock or carrying a right to subscribe to or acquire shares of common stock;

(4) holders of common stock without voting power are not entitled to a preemptive right to shares of common stock with voting power;

(5) a preemptive right is only an opportunity to acquire shares or other securities under the terms and conditions as the board may fix for the purpose of providing a fair and reasonable opportunity for the exercise of the preemptive right.

**Sec. 10.06.430. Books and records.** (a) A corporation organized under this chapter shall keep correct and complete books and records of account, minutes of proceedings of its shareholders, board, and committees of the board, and a record of its shareholders, containing the names and addresses of all shareholders and the number and class of the shares held by each. The books and records of account, minutes, and the record of shareholders may be in written form or in any other form capable of being converted into written form within a reasonable time.

(b) A corporation organized under this chapter shall make its books and records of account, or certified copies of them, reasonably available for inspection and copying at the registered office or principal place of business in the state by a shareholder of the corporation. Shareholder inspection shall be upon written demand stating with reasonable particularity the purpose of the inspection. The inspection may be in person or by agent or attorney, at a reasonable time and for a proper purpose. Only books and records of account, minutes, and the record of shareholders directly connected to the stated purpose of the inspection may be inspected or copied.

(c) An officer or agent who, or a corporation that, refuses to allow a shareholder, or the agent or attorney of the shareholder, to examine and make copies from its books and records of account, minutes, and record of shareholders, for a proper purpose, is liable to the shareholder for a penalty in the amount of 10 percent of the value of the shares owned by the shareholder or \$5,000, whichever is greater, in addition to other damages or remedy given the shareholder by law. It is a defense to an action for penalties under this section that the person suing has within two years sold or offered for sale a list of shareholders of the corporation or any other corporation or has aided or abetted a person in procuring a list of shareholders for this purpose, or has improperly used information secured through a prior examination of the books and records of account, minutes, or record of shareholders of the corporation or any other corporation, or was not acting in good faith or for a proper purpose in making the person's demand.

(d) Nothing in this chapter impairs the power of a court, upon proof by a shareholder of a demand properly made and for a proper purpose, to compel the production for examination by the shareholder of the books and records of account, minutes, and record of shareholders of a corporation.

**Sec. 10.06.433. Annual report to shareholders; content; financial statement on request.** (a) The board shall send an annual report to the shareholders not later than 180 days after the close of the fiscal year or the date on which notice of the annual meeting in the next fiscal year is sent under AS 10.06.410, whichever is first. A corporation with less than 100 holders of record of its shares, as determined under AS 10.06.408, is exempt from this annual requirement unless its articles or bylaws impose the requirement. The annual report must contain a balance sheet as of the end of the fiscal year and an income statement and statement of changes in financial position for the fiscal year, accompanied by a report on the fiscal year by independent accountants or, if there is no such report, the certificate of an authorized officer of the corporation that the statements were prepared without audit from the books and records of the corporation.

(b) In addition to the financial statement required by (a) of this section, unless a corporation has a nonexempt class of securities registered under Section 12 of the Securities Exchange Act of 1934 or files reports under Sections 7(c), 8(c), and 28 of the Alaska Native Claims Settlement Act, the annual report of a corporation having 100 or more holders of record of its shares must also briefly describe

(1) all transactions, excluding compensation of officers and directors, during the previous fiscal year involving an amount in excess of \$40,000, other than contracts let at competitive bid or services rendered at prices regulated by law, to which the corporation or its parent or subsidiary was a party, and in which a director or officer of the

corporation or of a subsidiary or, if known to the corporation, its parent, or subsidiary, a holder of more than 10 percent of the outstanding voting shares of the corporation had a direct or indirect material interest; the report must include the name of the person, the person's relationship to the corporation, the nature of the person's interest in the transaction and, if practicable, the amount of the interest; in the case of a transaction with a partnership of which the person is a partner, only the interest of the partnership need be stated; a report is not required in the case of transactions approved by the shareholders under AS 10.06.478;

(2) the amount and circumstances of indemnifications or advances aggregating more than \$10,000 paid during the fiscal year to an officer or director of the corporation under AS 10.06.490; a report is not required in the case of indemnification approved by the shareholders under AS 10.06.490(d)(3).

(c) A shareholder or shareholders holding at least five percent of the outstanding shares of a class of a corporation may make a written request to the corporation for an income statement of the corporation for the three-month, six-month, or nine-month period of the current fiscal year ended more than 30 days before the date of the request and a balance sheet of the corporation as of the end of the period and, in addition, if an annual report for the last fiscal year has not been sent to shareholders, the statements required by (a) of this section for the last fiscal year. The statement shall be delivered or mailed to the person making the request within 30 days of the request. A copy of the statements shall be kept on file in the principal office of the corporation for 12 months and they shall be exhibited at all reasonable times to a shareholder demanding an examination of the statements or a copy of the statements shall be mailed to that shareholder.

(d) A corporation shall, upon the written request of a shareholder, mail to the shareholder a copy of the last annual, semiannual or quarterly income statement that it has prepared and a balance sheet as of the end of the period.

(e) The quarterly income statements and balance sheets referred to in this section shall be accompanied by any report on those statements by independent accountants engaged by the corporation or the certificate of an authorized officer of the corporation that the financial statements were prepared without audit from the books and records of the corporation.

(f) A corporation that neglects, fails, or refuses to prepare or submit the financial statements required by this section is subject to a penalty of \$25 for each day that the failure or refusal continues, beginning 30 days after receipt of written request that the duty be performed from one entitled to make the request, up to a maximum of \$1,500. The penalty shall be paid to the shareholder or shareholders jointly making the request for performance of the duty or duties imposed by this section. In addition to this penalty, the court may enforce the duty of making and mailing or delivering the information and financial statements required by this section and, for good cause shown, may extend the time limits under this section.

(g) This section applies to a domestic corporation and a foreign corporation having its principal executive office in this state or customarily holding meetings of its board in this state.

(h) A corporation may deliver the annual report required under (a) of this section

(1) by mail;

(2) in person; or

(3) by electronic transmission, or by a posting on an electronic network together with a separate notice of the specific posting to the shareholder, if the corporation has received a writing or an electronic transmission from the shareholder that includes information demonstrating that the shareholder authorized the electronic transmission and delivery of annual reports by electronic transmission or electronic posting.

**Sec. 10.06.435. Shareholders' derivative action.** (a) An action may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor by a holder of shares of the corporation, of voting trust certificates of the corporation, or of a beneficial interest in shares of the corporation.

(b) In a derivative action, the complaint shall be verified and shall allege that plaintiff was a shareholder, of record or beneficially, or the holder of voting trust certificates at the time or during any part of the transaction of which the plaintiff complains or that the plaintiff's shares or voting trust certificates devolved upon the plaintiff by operation of law from a holder who was a holder at the time or during any part of the transaction complained of. A shareholder who does not meet the requirements of this section may be allowed in the discretion of the court to maintain the action on a preliminary showing to and determination by the court, by motion and after a hearing at which the court considers evidence, by affidavit or testimony, as it considers material, that

(1) there is a strong prima facie case in favor of the claim asserted on behalf of the corporation;

(2) no other similar action has been or is likely to be instituted;

(3) the plaintiff acquired the shares before there was disclosure to the public or to the plaintiff of the wrongdoing of which the plaintiff complains;

(4) unless the action can be maintained the defendant may retain a gain derived from the defendant's wilful breach of a fiduciary duty; and

(5) the requested relief will not result in unjust enrichment of the corporation or a shareholder of the corporation.

(c) Unless excused on grounds that a majority of the directors is implicated in or under the direct or indirect control of a person who is implicated in the injury to the corporation, before an action in the right of a domestic or foreign corporation is instituted a plaintiff who has standing under (b) of this section shall make a formal demand upon the board to secure the action the plaintiff desires.

(d) If a shareholder fails to make a formal demand under (c) of this section the complaint shall state with particularity the facts establishing excuse under (c) of this section. In a motion to dismiss for failure to make demand on the board the shareholder shall have the burden to establish excuse.

(e) In a case in which demand on the board is made under (c) of this section, a decision by the board that, in its business judgment, the litigation would not be in the best interest of the corporation terminates the right created by (a) of this section.

(f) In a case in which demand on the board is excused under (c) of this section or the decision of the board under (e) of this section is rejected by the court as inconsistent with the directors' duties of care and loyalty to the corporation, a plaintiff who has standing under (b) of this section shall have the right to commence or continue the action created by (a) of this section. Notwithstanding (c) or (e) of this section, disinterested, noninvolved directors acting as the board or a duly charged board committee may petition the court to dismiss the plaintiff's action on grounds that in their independent, informed business judgment the action is not in the best interests of the corporation. The petitioners shall have the burden of establishing to the satisfaction of the court their disinterest, independence from any direct or indirect control of defendants in the action, and the informed basis on which they have exercised their asserted business judgment. If the court is satisfied that the petitions are disinterested, independent, and informed it shall then exercise an independent appraisal of the plaintiff's action to determine whether, considering the welfare of the corporation and relevant issues of public policy, it should dismiss the action.

(g) A shareholder action otherwise in conformity with this section may not be dismissed because the alleged injury or wrong to the corporation has been ratified by the outstanding shares. A court may consider the fact of ratification in framing any order for relief to which it considers the corporation entitled.

(h) In an action instituted or maintained in the right of a corporation by the holder or holders of record of less than five percent of the outstanding shares of any class of the corporation or of voting trust certificates for these shares, the corporation in whose right the action is brought or the defendants may at any time before final judgment move the court to require the plaintiff to give security for the reasonable expense, including attorney fees, that may be incurred by the moving party. The amount of the security may be increased or decreased from time to time in the discretion of the court upon a showing that the security has become inadequate or excessive. The corporation or other defendants may have recourse to the security in an amount as the court may determine upon the termination of the derivative action, whether or not the court finds the action was brought without reasonable cause.

(i) A derivative action may not be discontinued, abandoned, compromised or settled without the approval of the court having jurisdiction of the action. If the court determines that the interests of the shareholders or any class or classes of shareholders will be substantially affected by a discontinuance, abandonment, compromise, or settlement, the court in its discretion may direct that notice, by publication or otherwise, shall be given to the shareholders or class or classes of shareholders whose interests will be affected. If the court directs notice to be given, it shall determine which of the parties to the action shall bear the expense of giving the notice in an amount the court determines to be reasonable in the circumstances. The amount shall be awarded as special costs of the action.

(j) If the derivative action is successful, in whole or in part, or if anything is received as a result of the judgment, compromise, or settlement of that action, the court may award to the plaintiff or plaintiffs reasonable expenses, including reasonable attorney fees, and shall direct an accounting to the corporation for the remainder of the proceeds. This subsection does not apply to a judgment rendered only for the benefit of injured shareholders and limited to a recovery of the loss or damage sustained by them.

**Sec. 10.06.438. Liability of shareholders, subscribers, and others arising out of shares.** (a) A holder of or subscriber to shares of a corporation is under no obligation to the corporation or its creditors as holder or subscriber with respect to the shares other than the obligation to pay the corporation the full consideration for which the shares were issued or to be issued.

(b) An assignee or transferee of shares, or of a subscription for shares, in good faith and without knowledge or notice that the full consideration has not been paid, is not personally liable to the corporation or its creditors for any unpaid portion of the consideration.

(c) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver is not personally liable to the corporation or its creditors for any unpaid portion of the consideration.

(d) A pledgee or other holder of shares as collateral security is not personally liable as a shareholder.

**ARTICLE 6.**  
**DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS**

**Section**

- 450. Board of directors; duty of care; right of inspection; dissent**
- 453. Number, election, and tenure of directors; initial directors**
- 455. Classification of directors**
- 458. Declaration of board vacancy where director of unsound mind**
- 460. Removal of director without cause**
- 463. Removal of director by superior court**
- 465. Vacancies and resignation; special meeting of shareholders**
- 468. Executive and other board committees**
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- 478. Director conflicts of interest**
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- 483. Officers; tenure, resignation, authority, and duties**
- 485. Loans to directors, officers, and employees**
- 490. Indemnification of officers, directors, employees, and agents; insurance**

**Sec. 10.06.450. Board of directors; duty of care; right of inspection; dissent.** (a) All corporate powers shall be exercised by or under the authority of, and the business and affairs of a corporation shall be managed under the direction of, a board of directors except as may be otherwise provided in this chapter. If a provision is made under AS 10.06.468 or in the articles, the powers, duties, privileges, and liabilities conferred or imposed upon the board by this chapter shall be exercised, performed, extended and assumed to the extent and by the person or persons to whom they are delegated as provided in AS 10.06.468 or in the articles. Directors need not be residents of this state or shareholders of the corporation unless required by the articles or bylaws. The articles or bylaws may prescribe other qualifications for directors. The board may fix the compensation of directors unless otherwise provided in the articles.

(b) A director shall perform the duties of a director, including duties as a member of a committee of the board on which the director may serve, in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care, including reasonable inquiry, that an ordinarily prudent person in a like position would use under similar circumstances. Except as provided in (c) of this section, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by

(1) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) counsel, public accountants, or other persons as to matters that the director reasonably believes to be within the person's professional or expert competence; or

(3) a committee of the board upon which the director does not serve, designated in accordance with a provision of the articles or the bylaws, as to matters within the authority of the committee if the director reasonably believes the committee to merit confidence.

(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by (b) of this section unwarranted.

(d) A director has the absolute right at a reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of the corporation or a domestic or foreign subsidiary of the corporation. Inspection by a director may be made in person or by agent or attorney and the right of inspection includes the right to copy and make extracts. This section applies to a director of a foreign corporation having its principal executive office in this state or customarily holding meetings of its board in this state.

(e) A director of a corporation who is present at a meeting of its board at which action on a corporate matter is taken is presumed to have assented to the action taken unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the secretary of the meeting before adjournment or forwards the dissent by certified mail to the secretary of the corporation immediately after adjournment. The right to dissent does not apply to a director who voted in favor of the action.

**Sec. 10.06.453. Number, election, and tenure of directors; initial directors.** (a) The board of directors shall consist of one or more members. The number of directors shall be fixed by, or in the manner provided in, the bylaws, unless the articles fix the number of directors, in which case a change in the number of directors shall be

made only by amendment of the articles. If the number of directors is not otherwise set, the number of directors is three.

(b) Except as otherwise provided in AS 10.06.230 and this section, the number of directors may be increased or decreased by amendment of the articles or the bylaws or by action of the board or the shareholders under the specific provisions of an article or a bylaw adopted by approval of the outstanding shares. A change in the number of directors, including by amendment of the articles, is subject to the following limitations:

(1) if the board is authorized by the articles or the bylaws to change the number of directors, whether by amending the bylaws or by taking action under the specific provision of an article or a bylaw adopted by approval of the outstanding shares, the amendment or action shall require the vote of a majority of the entire board;

(2) a decrease in the number of directors may not shorten the term of an incumbent director.

(c) The articles may provide for the election of one or more directors by the holders of the shares of a class or series voting as a class or series.

(d) The names and addresses of the members of the first board may be stated in the articles. The members of the first board hold office until the first annual meeting of shareholders, and until their successors have been elected and qualified.

(e) At the first annual meeting of shareholders and at each subsequent annual meeting the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in the case of the classification of directors as permitted by AS 10.06.455. A director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified.

**Sec. 10.06.455. Classification of directors.** (a) If the board consists of three or more members, the articles of incorporation may provide that instead of electing all the directors annually the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, with the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after the classification the number of directors equal to the number of the class whose term expires at the time of the meeting shall be elected to hold office until the second succeeding annual meeting if there are two classes, or until the third succeeding annual meeting if there are three classes. A classification of directors is not effective before the first annual meeting of shareholders.

(b) Unless cumulative voting rights under AS 10.06.420(d) have been eliminated by the articles of incorporation, an amendment of the articles that would establish or require classification of the board under (a) of this section may not be adopted if the votes cast against the amendment would be sufficient to elect a director if voted cumulatively at an election of the entire board.

**Sec. 10.06.458. Declaration of board vacancy where director of unsound mind.** The board may declare vacant the office of a director who has been declared of unsound mind by a court order.

**Sec. 10.06.460. Removal of director without cause.** (a) At a regular or special meeting for which notice is given under AS 10.06.410 and this section, any or all of the directors may be removed without reason if the removal is approved by the outstanding shares, subject to the following:

(1) in the case of a corporation with 500 or more holders of record entitled to vote on the removal and election of directors, as determined under AS 10.06.408, written or printed notice of intention to seek removal under this section shall be delivered either personally or by mail to each shareholder of record entitled to vote at the meeting and if notice of intention to seek removal under this section is

(A) delivered to the president or secretary of the corporation at least 75 days before the date of the annual meeting it shall be included on the notice stating the place, day, and hour of the annual meeting without cost to the shareholder seeking removal; or

(B) not timely under (A) of this paragraph the shareholder seeking removal may, at the expense of that shareholder, deliver either personally or by mail the notice required by (1) of this subsection at any time up to 20 days before the date set for the annual meeting; if mailed, notice is considered delivered when deposited with postage prepaid in the United States mail addressed to the shareholder at the address appearing on the stock transfer books of the corporation;

(2) unless cumulative voting rights under AS 10.06.420(d) have been eliminated by the articles of incorporation, a director may not be removed, unless the entire board is removed, if the votes cast against removal would be sufficient to elect a director if voted cumulatively at an election at which the same total number of votes were cast; and

(3) if by provision in the articles of incorporation the holders of the shares of a class or series, voting as a class or series, are entitled to elect one or more directors, a director elected in that manner may be removed only by the applicable vote of the holders of the shares of that class or series.

(b) Except as provided in this section and AS 10.06.458, 10.06.463, and 10.06.465(c), a director may not be removed before the expiration of the term of office of the director.

**Sec. 10.06.463. Removal of director by superior court.** The superior court may, at the suit of the board or the shareholders holding at least 10 percent of the number of outstanding shares of any class, remove from office a director for fraudulent or dishonest acts, gross neglect of duty, or gross abuse of authority or discretion with reference to the corporation and may bar from reelection a director removed in that manner for a period prescribed by the court. The corporation shall be made a party to the suit.

**Sec. 10.06.465. Vacancies and resignation; special meeting of shareholders.** (a) Unless otherwise provided in the articles or bylaws of the corporation and except for a vacancy created by the removal of a director, vacancies on the board may be filled by a majority of the directors then in office, whether or not less than a quorum, or by a sole remaining director. Unless the articles or a bylaw adopted with approval of the outstanding shares provide that the board may fill vacancies occurring in the board by reason of removal of directors, the vacancies may be filled only by approval of the shareholders.

(b) The shareholders may elect a director to fill a vacancy not filled by the directors. An election by written consent to fill a vacancy requires the consent of a majority of the outstanding shares entitled to vote.

(c) If, after the filling of a vacancy by the directors, the directors who have been elected by the shareholders constitute less than a majority of the directors, a holder or holders of an aggregate of 10 percent or more of the shares outstanding at the time may call a special meeting of shareholders under AS 10.06.405 to elect the entire board. The term of office of a director terminates upon the election and qualification of a successor.

(d) Notwithstanding AS 10.06.453(e), a director may resign effective upon giving written notice to the chairman of the board, the president, the secretary, or the board of directors of the corporation, unless the notice specifies a later time for the effectiveness of the resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.

**Sec. 10.06.468. Executive and other board committees.** (a) If authorized by the articles or the bylaws of the corporation, the board, by resolution adopted by a majority of the entire board, may designate from among its members an executive committee and other committees of the board. Unless the number of directors fixed in accordance with AS 10.06.453 is less than three, each committee shall have at least two members, who serve at the pleasure of the board of directors. Each committee, to the extent provided in the resolution or the articles or bylaws of the corporation, has the authority of the board, except that a committee may not

(1) declare dividends or distributions;

(2) approve or recommend to shareholders actions or proposals required by this chapter to be approved by shareholders;

(3) designate candidates for the office of director, for purposes of proxy solicitation or otherwise, or fill vacancies on the board or any committee of the board;

(4) amend the bylaws;

(5) approve a plan or merger not requiring shareholder approval;

(6) capitalize retained earnings;

(7) authorize or approve the reacquisition of shares unless under a general formula or method specified by the board;

(8) authorize or approve the issuance or sale of, or a contract to issue or sell, shares or designate the terms of a series of a class of shares, unless the board, having acted regarding general authorization for the issuance or sale of shares, a contract to issue or sell, or the designation of a series, authorizes a committee, under a general formula or method specified by the board by resolution or by adoption of a stock option or other plan, to fix the terms of a contract for the sale of the shares and to fix the terms upon which the shares may be issued or sold, including, without limitation, the price, the dividend rate, provisions for redemption, sinking funds, conversion, voting or preferential rights, and provisions for other features of a class of shares, or a series of a class of shares, with full power in the committee to adopt a final resolution setting out all the terms of a series for filing with the commissioner under this chapter; or

(9) authorize, approve, or ratify contracts or other transactions between the corporation and one or more of its directors, or between the corporation and a corporation, firm, or association in which one or more of its directors has a material financial interest under AS 10.06.478.

(b) The designation of a committee, the delegation to the committee of authority, or action by the committee under that authority does not alone constitute compliance by a member of the board or the committee in question with the responsibility to act in good faith, in a manner the member reasonably believes to be in the best interests of the corporation, and with the care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

**Sec. 10.06.470. Meetings: call, place, notice, and waiver.** (a) A regular or special meeting of the board or a committee of the board may be called by the chair of the board, the president, a vice-president, the secretary, or a director and may be held at any place designated under the bylaws inside or outside the state, by remote communication, or at a designated place inside or outside the state and by remote communication. A member of the board or of a committee of the board participating in a meeting by remote communication is considered to be present in person at the meeting for the purposes of reaching a quorum under AS 10.06.473 and for voting at the meeting.

(b) A regular meeting of the board or a committee designated by the board may be held without notice if the time and place of the meeting is fixed by the bylaws or the board. A special meeting of the board or a committee designated by the board shall be held as provided in the bylaws or, in the absence of bylaw provision, after either notice in writing sent 10 days before the meeting or notice by electronic means, personal messenger, or comparable person-to-person communication given at least 72 hours before the meeting. Unless otherwise provided in the bylaws the notice of a special meeting shall include disclosure of the business to be transacted and the purpose of the meeting.

(c) Notice of a meeting need not be given to a director who signs a waiver of notice, whether before or after the meeting, or who attends the meeting without protesting before the meeting or at its commencement the lack of notice.

**Sec. 10.06.473. Quorum of directors.** (a) A majority of the number of directors fixed by the articles or bylaws of a corporation constitutes a quorum for the transaction of business unless a greater number is required by the articles or bylaws. The act of a majority of the directors present at a meeting at which a quorum is present is the act of the board, unless the act of a greater number is required by the articles or the bylaws.

(b) The provisions of this section apply with equal force to committees of the board established under AS 10.06.468 and action by committees.

**Sec. 10.06.475. Alternative meeting arrangements; informal action by directors.** (a) Unless prohibited by the articles or bylaws of the corporation, the board of a corporation or a committee designated by the board can validly conduct a meeting by communicating simultaneously with each other by means of conference telephones or similar communications equipment.

(b) Unless prohibited by the articles or bylaws of the corporation, action required or permitted to be taken by the board or a committee designated by the board may be taken without a meeting on written consents, identical in content, setting out the action taken and signed by all the members of the board or the committee. The written consents shall be filed with the minutes. The consents have the same effect as a unanimous vote.

**Sec. 10.06.478. Director conflicts of interest.** (a) A contract or other transaction between a corporation and one or more of the directors of the corporation, or between a corporation and a corporation, firm, or association in which one or more of the directors of the corporation has a material financial interest, is neither void nor voidable because the director or directors or the other corporation, firm, or association are parties or because the director or directors are present at the meeting of the board that authorizes, approves, or ratifies the contract or transaction, if the material facts as to the transaction and as to the director's interest are fully disclosed or known to the

(1) shareholders and the contract or transaction is approved by the shareholders in good faith, with the shares owned by the interested director or directors not being entitled to vote; or

(2) board, and the board authorizes, approves, or ratifies the contract or transaction in good faith by a sufficient vote without counting the vote of the interested director or directors, and the person asserting the validity of the contract or transaction sustains the burden of proving that the contract or transaction was just and reasonable as to the corporation at the time it was authorized, approved, or ratified.

(b) A common directorship does not alone constitute a material financial interest within the meaning of this section. A director is not interested within the meaning of this section in a resolution fixing the compensation of another director as a director, officer, or employee of the corporation, notwithstanding the fact that the first director is also receiving compensation from the corporation.

(c) A contract or other transaction between a corporation and a corporation or association of which one or more directors of the corporation are directors is neither void nor voidable because the director or directors are present at the meeting of the board that authorizes, approves, or ratifies the contract or transaction, if the material facts of the transaction and the director's other directorship are fully disclosed or known to the board and the board authorizes, approves, or ratifies the contract or transaction in good faith by a sufficient vote without counting the vote of the common director or directors or the contract or transaction is approved by the shareholders in good faith. This subsection does not apply to contracts or transactions covered by (a) of this section.

(d) Interested or common directors may be counted in determining the presence of a quorum at a meeting of the board that authorizes, approves, or ratifies a contract or transaction.

(e) Nothing in this section affects the prohibitions or restraints imposed by AS 45.50.

**Sec. 10.06.480. Liability of directors and contributions from shareholders and other directors.** (a) In addition to other liabilities, a director is liable in the following circumstances unless the director complies with the standard provided in AS 10.06.450(b) for the performance of the duties of directors:

(1) a director who votes for or assents to a distribution to the corporation's shareholders contrary to the provisions of AS 10.06.358, 10.06.360, 10.06.363, or 10.06.365 or contrary to a restriction in the articles of incorporation is liable to the corporation, jointly and severally with all other directors voting for or assenting to the distribution, for the amount of the distribution that is paid or the value of the assets that are distributed in excess of the amount of the distribution that could have been paid or distributed without violation of AS 10.06.305 - 10.06.390 or the restrictions of the articles of incorporation;

(2) a director who votes for or assents to a distribution to the corporation's shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation is liable to the corporation, jointly and severally with all other directors voting for or assenting to distribution, for the value of the assets that are distributed, to the extent that the debts, obligations, and liabilities of the corporation are not thereafter paid and discharged;

(3) a director who votes for or assents to a loan of assets of the corporation to an officer or employee or a loan secured by the corporation's shares contrary to the provisions of AS 10.06.485 or contrary to a restriction in the articles of incorporation is liable to the corporation, jointly and severally with all other directors voting for or assenting to the loan, for the amount of the loan that is in excess of a loan that could have been extended without a violation of AS 10.06.485 or the restriction in the articles of incorporation.

(b) A director against whom a claim is asserted under this section for the distribution of assets of the corporation is entitled to contribution from shareholders who accepted or received the assets, knowing the distribution to have been made in violation of this chapter, in proportion to the amounts received by them. A director against whom a claim is asserted under this section for the extension of a loan is entitled to contribution from the person receiving the loan.

(c) A director against whom a claim is asserted under this section is entitled to contribution from other directors who voted for or assented to the action upon which the claim is asserted.

**Sec. 10.06.483. Officers; tenure, resignation, authority, and duties.** (a) A corporation shall have a president, a secretary, a treasurer and other officers with titles and duties as stated in the bylaws of the corporation or determined by the board and as may be necessary to enable the corporation to sign instruments and share certificates. Any two or more offices may be held by the same person, except the offices of president and secretary. When all of the issued and outstanding stock of the corporation is owned by one person, the person may hold all or any combination of offices.

(b) Except as otherwise provided in the articles or bylaws of the corporation, officers shall be chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under a contract of employment. An officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under a contract to which the officer is a party.

(c) All officers as between themselves and the corporation have the authority and shall perform the duties in the management of the corporation as provided in the bylaws of the corporation or, to the extent not provided in the bylaws, as provided by the board.

(d) Subject to the provisions of AS 10.06.020, a note, mortgage, evidence of indebtedness, contract, conveyance, or other instrument in writing, and an assignment or endorsement of these, executed or entered into between the corporation and another person, if signed by two individuals, one of whom is the chairman of the board, the president, or a vice-president and the other of whom is the secretary, an assistant secretary, the treasurer, or an assistant treasurer of the corporation, is not invalidated as to the corporation by a lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the instrument.

(e) An officer shall perform the duties of the office in good faith and with that degree of care, including reasonable inquiry, that an ordinarily prudent person in a like position would use under similar circumstances. Except as provided in (f) of this section, an officer is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data in each case prepared or presented by legal counsel or public accountants.

(f) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by (e) of this section unwarranted.

**Sec. 10.06.485. Loans to directors, officers, and employees.** (a) A loan may not be extended to an officer or employee without authorization by the board. A loan may not be extended to a director without the approval of two-thirds of the voting shares. An employee or officer who is also a director is considered a director for purposes of this section. A shareholder is not disqualified from voting on a loan to a shareholder as a director because of personal interest.

(b) A loan to a director, officer, or employee and a loan secured by the shares of the corporation may not be made unless the loan would be permissible as a distribution under AS 10.06.358 - 10.06.365. A loan under this subsection impairs the retained earnings or paid-in capital accounts to the extent of the loan.

(c) For purposes of this section, a loan may consist of cash, securities, or personal or real property.

(d) If a corporation acts as a guarantor on a loan to a director, officer, or employee, the guarantee is treated as a loan under this section.

(e) A director, officer, or employee of an affiliate corporation is a director, officer, or employee of the lending corporation for purposes of this section.

(f) A loan is to be judged by the duties of directors and officers to act in good faith in a manner reasonably believed to be in the best interests of the corporation and with the care, including reasonable inquiry, that an ordinarily prudent person in a like position would use under similar circumstances.

**Sec. 10.06.490. Indemnification of officers, directors, employees, and agents; insurance.** (a) A corporation may indemnify a person who was, is, or is threatened to be made a party to a completed, pending, or threatened action or proceeding, whether civil, criminal, administrative, or investigative, other than an action by or in the right of the corporation, by reason of the fact that the person is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. Indemnification may include reimbursement of expenses, attorney fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with the action or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to a criminal action or proceeding, the person had no reasonable cause to believe the conduct was unlawful. The termination of an action or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, does not create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to a criminal action or proceeding, the person had reasonable cause to believe that the conduct was unlawful.

(b) A corporation may indemnify a person who was, is, or is threatened to be made a party to a completed, pending, or threatened action by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. Indemnification may include reimbursement for expenses and attorney fees actually and reasonably incurred by the person in connection with the defense or settlement of the action if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation. Indemnification may not be made in respect of any claim, issue, or matter as to which the person has been adjudged to be liable for negligence or misconduct in the performance of the person's duty to the corporation except to the extent that the court in which the action was brought determines upon application that, despite the adjudication of liability, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for expenses that the court considers proper.

(c) To the extent that a director, officer, employee, or agent of a corporation has been successful on the merits or otherwise in defense of an action or proceeding referred to in (a) or (b) of this section, or in defense of a claim, issue, or matter in the action or proceeding, the director, officer, employee, or agent shall be indemnified against expenses and attorney fees actually and reasonably incurred in connection with the defense.

(d) Unless otherwise ordered by a court, indemnification under (a) or (b) of this section may only be made by a corporation upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because the director, officer, employee, or agent has met the applicable standard of conduct set out in (a) and (b) of this section. The determination shall be made by

(1) the board by a majority vote of a quorum consisting of directors who were not parties to the action or proceeding; or

(2) independent legal counsel in a written opinion if a quorum under (1) of this subsection is

(A) not obtainable; or

(B) obtainable but a majority of disinterested directors so directs; or

(3) approval of the outstanding shares.

(e) The corporation may pay or reimburse the reasonable expenses incurred in defending a civil or criminal action or proceeding in advance of the final disposition in the manner provided in (d) of this section if

(1) in the case of a director or officer, the director or officer furnishes the corporation with a written affirmation of a good faith belief that the standard of conduct described in AS 10.06.450(b) or 10.06.483(e) has been met;

(2) the director, officer, employee, or agent furnishes the corporation a written unlimited general undertaking, executed personally or on behalf of the individual, to repay the advance if it is ultimately determined that an applicable standard of conduct was not met; and

(3) a determination is made that the facts then known to those making the determination would not preclude indemnification under this chapter.

(f) The indemnification provided by this section is not exclusive of any other rights to which a person seeking indemnification may be entitled under a bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in the official capacity of the person and as to action in another capacity while holding the office. The right to indemnification continues as to a person who has ceased to be a director, officer, employee, or agent, and inures to the benefit of the heirs, executors, and administrators of the person.

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

## ARTICLE 7. AMENDMENTS AND CHANGES

### Section

**502. Permitted and prohibited amendments**

**504. Procedure to amend articles of incorporation; application to certain elections**

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**524. Filing of amendment of articles in reorganization proceedings**

**526. Effective date and effect of amendment of articles in reorganization proceedings**

**Sec. 10.06.502. Permitted and prohibited amendments.** (a) By complying with the provisions of this chapter a corporation may amend its articles of incorporation from time to time and in as many respects as desired if its articles as amended contain only provisions that would be lawful to insert in original articles filed at the time of the filing of the amendment.

(b) In particular, and without limitation upon the general power of amendment, a corporation may amend its articles of incorporation to

(1) change its corporate name;

(2) extend a limitation upon its period of duration;

(3) change, enlarge, or diminish a limitation upon its corporate purpose;

(4) increase or decrease the aggregate number of shares, or shares of a class, that the corporation has authority to issue;

(5) exchange, classify, reclassify, or cancel all or part of its shares, whether issued or unissued;

(6) change the designation of all or a part of its shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights of all or part of its shares, whether issued or unissued;

(7) change shares of a class, whether issued or unissued, into a different number of shares of the same class or into the same or a different number of shares of other classes;

(8) create new classes or shares having rights and preferences either prior and superior or subordinate and inferior to the shares of class then authorized, whether issued or unissued;

(9) cancel or otherwise affect the right of the holders of the shares of class to receive dividends that have accrued but have not been declared;

(10) divide a preferred or special class of shares, whether issued or unissued, into series and fix and determine the designation of the series and the variations in the relative rights and preferences as between the shares of the series;

(11) authorize the board to establish, out of authorized but unissued shares, series of a preferred or special class of shares and fix and determine the relative rights and preferences of the shares of the series;

(12) authorize the board to fix and determine the relative rights and preferences of the authorized but unissued shares of series in which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences are to be changed;

(13) revoke, diminish, or enlarge the authority of the board to establish series out of authorized but unissued shares of a preferred or special class and fix and determine the relative rights and preferences of the shares of that series; and

(14) limit, deny, or grant to shareholders of a class the preemptive right to acquire additional shares of the corporation, whether then or thereafter authorized.

(c) A corporation may not amend its articles of incorporation to alter a statement that may appear in the original articles of the names and addresses of the first directors, or the name and address of the initial agent, except to correct an error in the statement or to delete either after the corporation has filed a notice under AS 10.06.165 or 10.06.813.

**Sec. 10.06.504. Procedure to amend articles of incorporation; application to certain elections.** (a) A corporation shall amend its articles of incorporation in the following manner:

(1) if shares have not been issued, the board shall adopt a resolution setting out the proposed amendment or amendments;

(2) subject to AS 10.06.506, if shares have been issued, an amendment shall be approved by the board and the outstanding shares; approval may be initiated by the shareholders either before or after consideration by the board; if the board adopts a resolution setting out a proposed amendment, the board shall direct that the amendment be submitted to a vote at a meeting of shareholders that may be either the annual or a special meeting; if approval of the outstanding shares is obtained before action by the board, the board shall consider and either approve or reject the amendment at the next regular or special meeting;

(3) unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more of the following amendments to the articles of incorporation without shareholder action:

(A) to delete the names and addresses of the initial directors;

(B) to delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the commissioner; or

(C) to change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding.

(b) A proposed amendment may be contained in restated articles of incorporation that contain

(1) a statement that except for the designated amendment the restated articles correctly set out without change the provisions of the articles being amended; and

(2) a statement that the restated articles together with the designated amendment supersede the original articles and all amendments to the original articles.

(c) Written notice setting out the proposed amendment or amendments or a summary of the changes to be made shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the amendment is to be considered at an annual meeting, the proposed amendment or summary may be included in the notice of the annual meeting.

(d) The requirement of an affirmative vote of at least two-thirds of the shares entitled to vote for the adoption of an amendment to the articles of incorporation as provided in former AS 10.05.276 shall remain in force for corporations existing before July 1, 1989. This subsection does not apply to a corporation organized under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act).

(e) Notwithstanding (d) of this section, an election to be governed by the voting provisions of AS 10.06.504 - 10.06.506, may be made in the same manner as an amendment to the articles of incorporation is made under those sections. An election under this subsection requires the affirmative vote of at least two-thirds of the shares entitled to vote under former AS 10.05.276(3).

**Sec. 10.06.506. Class voting on amendments.** (a) The holders of the outstanding shares of a class may vote as a class upon a proposed amendment, whether or not the holders are entitled to vote on the amendment by the provisions of the articles of incorporation, if the amendment

(1) increases or decreases the aggregate number of authorized shares of the class;

(2) exchanges, reclassifies, or cancels all or part of the shares of the class;

(3) exchanges or creates a right of exchange of all or part of the shares of another class into the shares of the class;

(4) changes the designations, preferences, limitations, or relative rights of the shares of the class;

(5) changes the shares of the class into the same or a different number of shares of the same class or another class;

(6) creates a new class of shares having rights and preferences prior and superior to the shares of the class, or increases the rights and preferences or the number of authorized shares of a class having rights and preferences prior or superior to the shares of the class;

(7) divides the shares of a preferred or special class into series and fixes and determines the designation of the series and the variations in the relative rights and preferences between the shares of the series or authorizes the board to do so;

(8) limits or denies the existing preemptive rights of the shares of the class;

(9) cancels or otherwise affects dividends on the shares of the class that are accrued but not declared.

(b) If the holders of the outstanding shares of a class are entitled to vote as a class under (a) of this section, the amendment is not approved unless it receives a majority vote of the outstanding shares of that class and approval of the outstanding shares.

**Sec. 10.06.508. Greater voting requirements.** If the articles of incorporation require the vote of a larger proportion or of all of the shares of a class or series, or of a larger proportion or of all the directors, than is otherwise required by this chapter, the provision in the articles requiring the greater vote may not be altered, amended, or repealed except by that greater vote unless otherwise provided in the articles.

**Sec. 10.06.510. Execution and content of articles of amendment.** The articles of amendment shall be executed by the corporation by its president or vice-president and by its secretary or an assistant secretary and must set out the

(1) name of the corporation;

(2) amendment adopted;

(3) date of the approval of the amendment by the board and outstanding shares, or by the board if shares have not been issued;

(4) number of shares outstanding and the number of shares entitled to vote, and, if the shares of a class are entitled to vote as a class, the designation and number of outstanding shares of each class entitled to vote;

(5) number of shares voted for and against the amendment and, if the shares of a class are entitled to vote as a class, the number of shares of each class voted for and against the amendment or, if shares have not been issued, a statement to that effect; and

(6) manner in which an exchange, reclassification, or cancellation of issued shares is to be carried out if the amendment provides for an exchange, reclassification, or cancellation of issued shares and is not set out in the amendment.

**Sec. 10.06.512. Filing of articles of amendment.** An original and an exact copy of the articles of amendment shall be delivered to the commissioner for processing according to AS 10.06.910 and for issuance of a certificate of amendment.

**Sec. 10.06.514. Effective date and effect of amendment.** (a) An amendment is effective upon the issuance of a certificate of amendment by the commissioner, or on a later date, not more than 30 days after the filing of the certificate with the commissioner, as provided in the articles of amendment.

(b) An amendment may not affect an existing cause of action in favor of or against the corporation, or a pending suit to which the corporation is a party, or the existing rights of persons other than shareholders. If the corporate name is changed by amendment, a suit brought by or against the corporation under its former name does not abate.

**Sec. 10.06.516. Restated articles of incorporation.** A domestic corporation may, by resolution adopted by the board, restate its articles of incorporation as amended up to that time. Upon the adoption of the resolution, restated articles shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and must set out all of the operative provisions of the articles as amended up to that time together with a statement that the restated articles correctly set out without change the corresponding provisions of the articles as amended up to that time and that the restated articles supersede the original articles and all amendments to them.

**Sec. 10.06.518. Filing of restated articles of incorporation.** An original and an exact copy of the restated articles of incorporation shall be delivered to the commissioner for processing according to AS 10.06.910 and for issuance of a restated certificate of incorporation.

**Sec. 10.06.520. Effect of issuance of restated certificate of incorporation.** Upon the issuance of a restated certificate of incorporation, the restated articles of incorporation become effective and supersede the original articles and all amendments.

**Sec. 10.06.522. Amendment of articles of incorporation in reorganization proceedings.** (a) If a plan of reorganization of a corporation has been confirmed by decree or order of a court in proceedings for the reorganization of the corporation under an applicable statute of the United States relating to reorganization of corporations, the articles of the corporation may be amended as necessary in the manner provided in (c) of this

section, in order to carry out the plan and put it into effect, only if the articles as amended contain provisions that might be lawfully contained in original articles at the time of the making of the amendment.

(b) In particular, and without limitation upon the general power of amendment, the articles of incorporation may be amended to

- (1) change the corporate name, period of duration, or corporate purposes of the corporation;
- (2) repeal, alter, or amend the bylaws of the corporation;
- (3) change the aggregate number of shares or shares of a class that the corporation has authority to issue;
- (4) change the preferences, limitation, and relative rights of all or part of the shares of the corporation, and classify, reclassify, or cancel all or part of the shares, whether issued or unissued;
- (5) authorize the issuance of bonds, debentures, or other obligations of the corporation, whether or not convertible into shares of a class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of a class, and fix the terms and conditions of the bonds, debentures, or other obligations; and
- (6) constitute or reconstitute and classify or reclassify the board of the corporation, and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

(c) Articles of amendment approved by decree or order of a court shall be executed by the person or persons the court designates or appoints for the purpose and must set out the name of the corporation, the amendments of the articles approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered, and a statement that the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation under an applicable statute of the United States.

**Sec. 10.06.524. Filing of amendment of articles in reorganization proceedings.** An original and an exact copy of the articles of amendment in reorganization proceedings shall be delivered to the commissioner for processing according to AS 10.06.910 and for issuance of a certificate of amendment.

**Sec. 10.06.526. Effective date and effect of amendment of articles in reorganization proceedings.** An amendment becomes effective upon the issuance of a certificate of amendment in reorganization proceedings, and the articles are considered to be amended without action by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation.

## **ARTICLE 8. ORGANIC CHANGE**

### **Section**

- 530. Merger**
- 532. Procedure for merger**
- 534. Consolidation**
- 536. Procedure for consolidation**
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- 542. Disparate treatment of shares of the same class or series prohibited; exceptions**
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- 570. Approval of transaction by shareholders**
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**action; notice of election; treatment of shares**

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**580. Action to determine value of shares**

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**595. Application of provisions**

**600. Definitions**

**Sec. 10.06.530. Merger.** Two or more domestic corporations may merge into one of such corporations under a plan of merger approved in the manner provided in AS 10.06.530 - 10.06.582.

**Sec. 10.06.532. Procedure for merger.** A plan of merger approved by a resolution of the board of each corporation shall be proposed setting out

(1) the names of the corporations proposing to merge and the name of the surviving corporation into which they propose to merge;

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

(3) the manner and basis of converting the shares of each merging corporation into shares or other securities or obligations of the surviving corporation;

(4) a statement of changes in the articles of incorporation of the surviving corporation caused by the merger; and

(5) other provisions of the merger considered necessary or desirable.

**Sec. 10.06.534. Consolidation.** Two or more domestic corporations may consolidate into a new domestic corporation under a plan of consolidation approved in the manner provided in AS 10.06.530 - 10.06.582.

**Sec. 10.06.536. Procedure for consolidation.** A plan of consolidation approved by a resolution of the board of each corporation shall be proposed setting out

(1) the names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate;

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

(3) the manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation;

(4) the statements with respect to the new corporation required to be set out in the articles of incorporation for corporations organized under this chapter; and

(5) other provisions of the consolidation considered necessary or desirable.

**Sec. 10.06.538. Share exchange.** All of the issued or outstanding shares of one or more classes of a domestic corporation may be acquired through the exchange of all of the issued or outstanding shares of the class or classes by another domestic or foreign corporation under a plan of exchange approved in the manner provided in AS 10.06.530 - 10.06.582.

**Sec. 10.06.540. Procedure for share exchange.** (a) A plan of exchange approved by a resolution of the board of each corporation shall be proposed setting out

(1) the name of the corporation the shares of which are proposed to be acquired by exchange and the name of the acquiring corporation;

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

(3) the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring corporation or another corporation, or, in whole or in part, for cash or other property;

(4) other provisions of the proposed exchange considered necessary or desirable.

(b) The procedure authorized by this section does not limit the power of a corporation to acquire all or part of the shares of any class or classes of a corporation through voluntary exchange or otherwise by agreement with the shareholders.

**Sec. 10.06.542. Disparate treatment of shares of the same class or series prohibited; exceptions.** (a) Except as provided in (b) of this section all shares of the same class or series shall be treated equally with respect to a distribution of shares, cash, property, rights, or securities in any plan of merger, consolidation, or share exchange.

(b) Disparate treatment of shares of the same class or series may be proposed in a plan of merger, consolidation, or share exchange if

(1) disparate treatment is necessary to preserve a subchapter S election under the Internal Revenue Code of 1954;

- (2) there is a sound business reason for disparate treatment and proponents of the plan prove it is consistent with fiduciary duties owed to all shareholders; or
- (3) there is unanimous consent of all shareholders.

**Sec. 10.06.544. Notice to and approval by shareholders.** Upon approval by the board of each corporation of a plan of merger, consolidation, or exchange, each board shall, by resolution, direct that the plan be submitted for approval, at either an annual or special meeting, by the outstanding shares of each corporation. Written notice shall be given to each shareholder of record, whether or not the share or shares of the shareholder have voting rights under the articles of the corporation, not less than 20 days before the meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders. Whether the meeting is an annual or special meeting, the notice shall state that the purpose or one of the purposes of the meeting is to consider the proposed plan of merger, consolidation, or exchange. A copy or summary of the plan of merger, consolidation, or exchange, as well as a copy of AS 10.06.574 and 10.06.576, concerning the rights of a dissenting shareholder, shall be included with the notice.

**Sec. 10.06.546. Manner of approval by shareholders.** At each meeting for which notice is given under AS 10.06.544 a vote of the shareholders shall be taken on the proposed plan of merger, consolidation, or exchange. Each outstanding share of each corporation may vote on the proposed plan whether or not the share has voting rights under the articles of the corporation. The plan is approved if it receives the affirmative vote of at least two-thirds of the outstanding shares of each corporation. If a class of shares of a corporation is entitled to vote on the plan as a class, the plan is approved if it receives the affirmative vote of at least two-thirds of the outstanding shares of each class of shares entitled to vote on the plan as a class and the affirmative vote of at least two-thirds of the total shares entitled to vote on the plan. A class of shares of a corporation is entitled to vote as a class if a plan contains a provision that, if contained in a proposed amendment to the articles of incorporation, would entitle the class of shares to vote as a class and, in the case of an exchange, if the class is included in the exchange.

**Sec. 10.06.548. Abandonment of plan of merger, consolidation, or exchange.** After approval of the outstanding shares of each corporation under AS 10.06.546 and before the filing of the articles of merger, consolidation, or exchange, the merger, consolidation, or exchange may be abandoned under provisions set out in the plan.

**Sec. 10.06.550. Execution and contents of articles of merger, consolidation, or exchange.** After approval, articles of merger, articles of consolidation, or articles of exchange shall be executed by each corporation by its president or a vice-president and by its secretary or an assistant secretary, and must set out the

- (1) plan of merger, consolidation, or exchange;
- (2) number of shares outstanding of each corporation and, if the shares of a class were entitled to vote as a class, the designation and number of outstanding shares of the class; and
- (3) number of shares voted for and against the plan and, if the shares of a class were entitled to vote as a class, the number of shares of the class voted for and against the plan.

**Sec. 10.06.552. Filing of articles of merger, consolidation, or exchange.** An original and an exact copy of the articles of merger, consolidation, or exchange shall be delivered to the commissioner for processing according to AS 10.06.910 and for the issuance of a certificate of merger, consolidation, or exchange.

**Sec. 10.06.554. Merger of subsidiary corporation.** A corporation owning at least 90 percent of the outstanding shares of each class of another corporation may merge the other corporation into itself without approval by a vote of the shareholders of either corporation.

**Sec. 10.06.556. Procedure for merger of subsidiary corporation.** (a) The board of a proposed surviving corporation shall, by resolution, approve a plan of merger setting out

- (1) the name of the subsidiary corporation and the name of the corporation owning at least 90 percent of its shares;
- (2) subject to AS 10.06.542, the manner and basis of converting the shares of the subsidiary corporation into shares, obligations, or other securities of the surviving or other corporation or, in whole or in part, into cash or other property.

(b) A copy of a plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

(c) Articles of merger shall be executed by the surviving corporation by its president or a vice-president and by its secretary or an assistant secretary and must set out the

- (1) plan of merger;
- (2) number of outstanding shares of each class of the subsidiary corporation and the number of those shares of each class owned by the surviving corporation; and

(3) date of the mailing to shareholders of the subsidiary corporation of the plan of merger.

**Sec. 10.06.558. Filing of articles of merger of subsidiary corporation.** An original and an exact copy of the articles of merger of a subsidiary corporation shall be delivered to the commissioner for processing according to AS 10.06.910 and for the issuance of a certificate of merger.

**Sec. 10.06.560. Effective date and effect of merger, consolidation, or exchange.** (a) A merger, consolidation, or exchange is effective upon the issuance of a certificate of merger, consolidation, or exchange by the commissioner, or on a later date, not more than 30 days after the filing of the certificate with the commissioner, as provided in the plan.

(b) When a merger or consolidation becomes effective,

(1) the corporations that are parties to the plan of merger or consolidation shall be a single corporation, that, 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;

(2) the separate existence of all corporations that are parties to the plan of merger or consolidation, except the surviving or new corporation, ceases;

(3) a surviving or new corporation has all the rights, privileges, immunities, and powers and is subject to all the duties and liabilities of a corporation organized under this chapter;

(4) the surviving or new corporation possesses all the public and private rights, privileges, immunities, and franchises of each of the merging or consolidating corporations; all property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and every other interest of, belonging to, or due to each of the merged or consolidated corporations, shall be transferred to and vested in the surviving or new corporation without further act; and the title to real estate, or an interest in real estate, vested in any of the corporations may not revert or be in any way impaired by reason of a merger or consolidation;

(5) a surviving or new corporation is responsible and liable for all the liabilities and obligations of each of the merged or consolidated corporations; a claim existing or action or proceeding pending by or against the merged or consolidated corporations may be prosecuted as if the merger or consolidation has not taken place, or the surviving or new corporation may be substituted in its place; and the rights of creditors or any liens upon the property of the merged or consolidated corporations may not be impaired by the merger or consolidation;

(6) in the case of a merger, the articles of incorporation of the surviving corporation are considered to be amended to the extent that changes in its articles are stated in the plan of merger; and, in the case of a consolidation, the statements set out in the articles of consolidation that are required or permitted to be set out in the articles of incorporation of corporations organized under this chapter are considered to be the original articles of the new corporation.

(c) When a merger, consolidation, or exchange becomes effective, the shares of the corporation or corporations party to the plan that are to be converted or exchanged under the terms of the plan cease to exist, in the case of a merger or consolidation, or are considered to be exchanged, in the case of an exchange, and the holders of the shares are entitled only to the shares, obligations, other securities, cash, or other property into which the shares have been converted or for which they have been exchanged, in accordance with the plan, subject to the rights under AS 10.06.574.

**Sec. 10.06.562. Merger, consolidation, or exchange of shares between domestic and foreign corporation.** One or more foreign corporations and one or more domestic corporations may be merged or consolidated, or participate in an exchange, if the merger, consolidation, or exchange is permitted by the laws of the state under which each foreign corporation is organized and

(1) each domestic corporation complies with the provisions of this chapter with respect to the merger, consolidation, or exchange of domestic corporations and each foreign corporation complies with the applicable provisions of the laws of the state under which it is organized; and

(2) if the surviving or new corporation is to be governed by the laws of another state, it complies with the provisions of this chapter concerning foreign corporations if it is to transact business in this state and it files with the commissioner an

(A) agreement that the surviving or new foreign corporation may be served with process in this state in a proceeding for the enforcement of an obligation of a domestic corporation that is a party to the merger or consolidation and in a proceeding for the enforcement of the rights of a dissenting shareholder of a domestic corporation against the surviving or new corporation;

(B) irrevocable appointment of the commissioner as the agent of the surviving or new corporation to accept service of process in a proceeding described in (A) of this paragraph; and

(C) agreement that it will promptly pay to the dissenting shareholders of a domestic corporation the amount to which they are entitled under provisions of this chapter with respect to the rights of dissenting shareholders.

**Sec. 10.06.564. Disclosure of alien affiliates.** Not less than 20 days before the consummation of an organic change under AS 10.06.530 - 10.06.562, the surviving or new corporation shall deliver to the commissioner

- (1) a list of the names and addresses of each alien affiliate of the surviving or new corporation;
- (2) the percentage of outstanding shares controlled by each alien affiliate; and
- (3) a specific description of the nature of the relationship between the surviving or new corporation and its alien affiliate.

**Sec. 10.06.566. Disposition of assets in regular course of business; mortgage or pledge of assets.** The board of the corporation, without the approval of the shareholders or outstanding shares of the corporation, may authorize the sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of a corporation in the usual and regular course of its business and the mortgage or pledge of any or all property and assets of a corporation whether or not in the usual and regular course of business, upon terms and conditions and for consideration, that may consist in whole or in part of cash or other property, including shares, obligations, or other securities of another domestic or foreign corporation.

**Sec. 10.06.568. Disposition of assets not in regular course of business.** (a) A sale, lease, exchange, or other disposition of all, or substantially all, of the property and assets, with or without the good will, of a corporation, if not in the usual and regular course of its business, may be made upon terms and conditions and for consideration, that may consist in whole or in part of cash or other property, including shares, obligations or other securities of another foreign or domestic corporation, as authorized in (b) of this section.

(b) A sale, lease, exchange, or other disposition shall be recommended to the shareholders by resolution approved by the board and submitted to a vote of the shareholders at a regular or special meeting. Written notice shall be given to each shareholder of record of the corporation, whether or not the shares have voting rights under the articles of the corporation, not less than 20 days before the meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders. Whether the meeting is an annual or special meeting the notice shall state that the purpose or one of the purposes of the meeting is to consider the proposed sale, lease, exchange, or other disposition, and include a copy of AS 10.06.574 - 10.06.576, concerning the rights of a dissenting shareholder.

**Sec. 10.06.570. Approval of transaction by shareholders.** (a) At a meeting for which notice is given under AS 10.06.568(b) a vote of the shareholders shall be taken on the recommended sale, lease, exchange, or other disposition and the shareholders may fix, or may authorize the board to fix, the terms and conditions and the consideration to be received by the corporation. The transaction is approved if the recommendation of the board receives the affirmative vote of at least two-thirds of the outstanding shares of the corporation, unless a class of shares is entitled to vote as a class, in which event the transaction shall be approved upon receiving the affirmative vote of at least two-thirds of the outstanding shares of each class of shares entitled to vote as a class and of the total shares entitled to vote.

(b) If the buyer in a sale of assets under AS 10.06.568 is in control of or under common control with the seller, the principal terms of the sale must be approved by at least 90 percent of the outstanding shares of the seller unless the sale is to a domestic or foreign corporation in consideration for the nonredeemable common shares of the purchasing corporation or its parent.

**Sec. 10.06.572. Abandonment of transaction by board.** The board in its discretion may abandon a sale, lease, exchange, or other disposition of assets after approval by the shares without further action or approval by the shares, subject to the rights of third parties under contracts relating to the sale, lease, exchange, or other disposition.

**Sec. 10.06.574. Right of shareholders to dissent.** (a) A shareholder may dissent from the following corporate actions:

- (1) a plan of merger, consolidation, or exchange to which the corporation is a party; or
- (2) a sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale under a court order or a sale for cash on terms requiring that all or substantially all of the net proceeds of the sale be distributed to the shareholders in accordance with their respective interests within one year after the date of sale.

(b) The rights of a shareholder who dissents as to less than all of the shares registered in the name of the shareholder shall be determined as if the shares as to which the shareholder dissents and the other shares of the shareholder are registered in the names of different shareholders.

(c) This section does not apply to the shareholders of the surviving corporation in a merger if a vote of shareholders of the surviving corporation is not necessary to authorize the merger.

(d) This section does not apply to the holders of shares of a class or series if the shares of the class or series were registered on a national securities exchange on the date fixed to determine the shareholders entitled to vote at the

meeting of shareholders at which the plan of merger, consolidation, or exchange or the proposed sale or exchange of property and assets is to be acted upon unless the articles of the corporation provide otherwise.

**Sec. 10.06.576. Procedures relating to the exercise of a shareholder's right to dissent; completion of corporate action; notice of election; treatment of shares.** (a) A shareholder electing to exercise a right to dissent shall file with the corporation, before or at the meeting of shareholders at which the proposed corporate action is submitted to a vote, a written objection to the proposed corporate action. The objection must include a notice of election to dissent, the shareholder's name and residence address, the number and classes of shares as to which the shareholder dissents, and a demand for payment of the fair value of the shares if the action is taken. A shareholder to whom the corporation did not give notice of the meeting in accordance with this chapter is not required to make the objection provided in this section.

(b) Within 10 days after the shareholders' vote authorizing the action, the corporation shall give written notice of the authorization to each shareholder who filed written objection or from whom written objection was not required. The corporation may consider that a shareholder who voted for the proposed action has elected not to enforce a right of dissent under this chapter, and need not give notice to the shareholder.

(c) Within 20 days after notice has been given under (b) of this section, a shareholder from whom written objection was not required under (a) of this section and who elects to dissent shall file with the corporation a written notice of the election, stating the shareholder's name and residence address, the number and classes of shares as to which the shareholder dissents, and a demand for payment of the fair value of the shares. A shareholder who elects to dissent from a merger under AS 10.06.532, a consolidation under AS 10.06.534, a share exchange under AS 10.06.540, a transaction authorized under AS 10.06.562, or a sale of assets under AS 10.06.568 shall file a written notice of the election to dissent within 20 days after the merger plan, consolidation plan, share exchange plan, or sale of assets resolution has been mailed to the shareholder.

(d) A merger, consolidation, or exchange is considered completed within the meaning of this chapter on the effective date determined in accordance with AS 10.06.560; a transaction under AS 10.06.568 is completed within the meaning of this chapter when the corporation has received the consideration specified in the board resolution that was submitted to the shareholders in accordance with that section.

(e) Upon completion of the corporation action, the shareholder shall cease to have the rights of a shareholder except the right to be paid the fair value of the shares as to which the dissenter's rights were perfected under this chapter. A notice of election may be withdrawn by the shareholder at any time before an acceptance under AS 10.06.578(f), but in no case later than 60 days from the date of completion of the corporate action, except that the time for withdrawing a notice of election shall be extended for 60 days from the date an offer is made, if the corporation fails to make a timely offer under AS 10.06.578. After the time for withdrawal has expired, withdrawal of a notice of election requires the written consent of the corporation. In order to be effective, withdrawal of a notice of election must be accompanied by the return to the corporation of an advance payment made to the shareholder as provided in AS 10.06.578. If a notice of election is withdrawn, if the corporate action is rescinded, if a court determines that the shareholder is not entitled to the right to dissent, or if the shareholder otherwise loses the right to dissent, the shareholder shall not have the right to receive payment for the shares and shall be reinstated to all rights as a shareholder that were effective on the date of the completion of the corporate action. The rights to which the shareholder is reinstated include intervening preemptive rights and the right to payment of an intervening dividend or other distribution. If an intervening right has expired or if a dividend or distribution that is not in cash has been completed, the corporation may elect to pay the shareholder the fair value of the shares in cash at the value, as determined by the board, at the time of the expiration or completion. The election to pay the value in cash shall be without prejudice to a corporate proceeding that has occurred in the interim.

(f) At the time of filing the notice of election to dissent, or within 30 days after the shareholder has filed the notice, the shareholder shall submit to the corporation, or to its transfer agent, the certificates representing the shares for which payment is claimed, if certificates have been issued. The corporation or its transfer agent shall note conspicuously on the certificates, or on a separate document if certificates have not been issued for the shares, that a notice of election has been filed, and shall return the certificates or the separate document to the shareholder or to the person who submitted them on the shareholder's behalf. Unless a court, for good cause shown, otherwise directs, a shareholder who fails to comply with this subsection loses the right to dissent granted by this chapter, if the corporation gives written notice that the right to dissent will be lost to the shareholder within 45 days from the date that the shareholder filed the notice of election to dissent. If the corporation fails to exercise this notice option in a timely manner, the shareholder retains the right to dissent granted by this chapter.

(g) When a share of a dissenting shareholder under (f) of this section is transferred, the new certificate must bear a notation similar to that made under (f) of this section and state the name of the original dissenting holder of the shares, or, if the share is an uncertificated share, the corporation must give the transferee a written notice stating that a notice of election to dissent has been filed and giving the name of the original dissenting holder. A transferee acquires only the rights in the corporation that the original dissenting shareholder had at the time of transfer.

**Sec. 10.06.578. Offer and payment to dissenting shareholders; circumstances where prohibited.** (a) Within 15 days after the expiration of the period within which shareholders may file their notice of election to dissent under AS 10.06.576, or within 15 days after the proposed corporate action is completed, whichever is later, the corporation or, in the case of a merger or consolidation, the surviving or new corporation, shall make a written offer by certified mail to each shareholder who has filed the notice of election, to pay the amount the corporation estimates to be the fair value of the shares. The offer shall be made at the same price for each share to all dissenting shareholders of the same class, or if divided into series, of the same series.

(b) The offer required by (a) of this section shall be accompanied by a

(1) balance sheet of the corporation whose shares the dissenting shareholder holds; the date of the balance sheet shall be that of the most recent balance sheet produced in the 12 months before the offer;

(2) profit and loss statement or statements for at least 12 months preceding the date of the balance sheet; if the corporation was not in existence during the entire 12-month period preceding the balance sheet required by (1) of this subsection, then a profit and loss statement for that portion of the 12-month period preceding the balance sheet during which the corporation was in existence;

(3) statement of the total number of shares with respect to which notices of election to dissent have been received and the total number of holders of these shares; and

(4) copy of this section and AS 10.06.580.

(c) If the corporate action has been completed the offer required by (a) of this section shall also be accompanied by

(1) advance payment to each shareholder who submitted the share certificates to the corporation, or to whom notice was sent if the shares were uncertificated, as provided in AS 10.06.576(f), of the amount offered under (a) of this section; or

(2) a statement to a shareholder who has not submitted the share certificates, if certificates were issued for the shares, that advance payment of the amount offered under (a) of this section will be made by the corporation promptly upon submission of the certificates.

(d) If the corporate action has not been completed when the offer required by (a) of this section is made, the advance payment or statement about the advance payment shall be sent to each shareholder entitled to the payment or notice, after completion of the corporate action.

(e) The advance payment or statement about the advance payment shall include advice to the shareholder that acceptance of the payment does not constitute a waiver of the shareholder's right to dissent.

(f) The corporation may consider that a shareholder who fails to make written objection to the amount tendered under (c)(1) of this section or to submit shares in response to the statement sent under (c)(2) of this section within 30 days of the date the statement was mailed has agreed that the amount offered represents the fair value of the shares. The shareholder shall have no interest in the shares or the outcome of litigation begun under AS 10.06.580.

(g) Notwithstanding the other provisions of this section, if the payments otherwise required by (c) and (d) of this section or determined in accordance with AS 10.06.580 would be distributions in violation of AS 10.06.358 - 10.06.365, or 10.06.375, the corporation may not make a distribution to a dissenting shareholder. In that event, a corporation that would otherwise have the payment obligation under (c) and (d) of this section or AS 10.06.580 shall, in addition to complying with (a) and (b) of this section, give written notice within the time limits of (a) and (b) of this section to dissenting shareholders of its inability to make payment. The notice must include

(1) an explanation why the corporation is unable to make the payments otherwise required by this section;

(2) a statement that a dissenting shareholder has an option to

(A) withdraw the shareholder's notice of election to dissent, and that the corporation will consider that the withdrawal was made with the written consent of the corporation; or

(B) retain the status of a dissenter, and, if the corporation is liquidated, be subordinated to the rights of the creditors of the corporation, but have rights superior to the nondissenting shareholders, but if the corporation is not liquidated, retain the right to be paid under (c) and (d) of this section or AS 10.06.580 and the corporation must satisfy the obligation when the restrictions on distributions do not apply; and

(3) a statement that if the corporation does not receive the written election provided under (2) of this subsection within 60 days after notice given as required by this section, the corporation will consider that the shareholder has withdrawn the notice of election under (2)(A) of this subsection.

**Sec. 10.06.580. Action to determine value of shares.** (a) If the corporation fails to make the offer required by AS 10.06.578(a) or the shareholder rejects the offer within the 30-day period specified in AS 10.06.578(f),

(1) the corporation shall, within 20 days after the expiration of the 30-day period specified in AS 10.06.578(f), file a petition in the court of the judicial district where the registered office of the corporation is located, requesting that the fair value of the shares be determined; if, in the case of a merger or consolidation, the surviving or new corporation is a foreign corporation without a registered office in the state, the petition shall be filed in the judicial district where the registered office of the domestic corporation was last located; or

(2) if the corporation fails to institute a proceeding as provided in this section, a dissenting shareholder may institute a proceeding in the name of the corporation; if a dissenting shareholder does not institute a proceeding within 30 days after the expiration of the 20-day period granted the corporation under (1) of this subsection, the dissenter loses the dissenter's rights unless the superior court, for good cause shown, otherwise directs.

(b) All dissenting shareholders who have rejected the corporate offer extended under AS 10.06.578(a), wherever residing, shall be made parties to the proceeding as an action against their shares quasi in rem. The corporation shall serve a copy of the complaint in the proceeding on each dissenting shareholder who is a resident of this state in the manner provided by the Alaska Rules of Civil Procedure, and on each nonresident dissenting shareholder either by certified mail and publication, or in another manner permitted by law. The jurisdiction of the court shall be plenary and exclusive. A dissenting shareholder who is a party to the proceeding is entitled to judgment against the corporation for the amount determined under (c) of this section to be the fair value of the shares of that shareholder.

(c) The court shall determine whether a dissenting shareholder who is a party to the court action is entitled to receive payment for the shareholder's shares. If the corporation does not request a determination, or if the court finds that a dissenting shareholder is entitled to a determination, the court shall establish the value of the shares; for the purposes of this section, the value shall be the fair value at the close of business on the day before the date on which the vote was taken approving the proposed corporate action. In fixing the fair value of the shares, the court shall consider the nature of the transaction giving rise to the right to dissent under AS 10.06.576, its effects on the corporation and its shareholders, the concepts and methods customary in the relevant securities and financial markets for determining the fair value of shares of a corporation engaging in a similar transaction under comparable circumstances, and other relevant factors. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value of the shares. The appraisers have the power and authority specified in the order of appointment or as amended.

(d) The judgment must include an allowance for interest at the rate the court finds to be fair and equitable, from the date on which the proposed corporate action vote was taken to the date of payment. In determining the rate of interest, the court shall consider all relevant factors, including the rate of interest that the corporation would have had to pay to borrow money during the pendency of the proceeding. If the court finds that the refusal of a shareholder to accept the corporate offer of payment for the shares is arbitrary, vexatious, or otherwise in bad faith, the court shall deny interest to the shareholder.

(e) A party to the proceeding shall bear its own costs and expenses, including the fees and expenses of its counsel and of any experts employed by it. Notwithstanding the foregoing, the court may, in its discretion, apportion and assess all or part of the costs, expenses, and fees incurred by the corporation against one or more of the dissenting shareholders who are parties to the proceeding, if the court finds that a refusal to accept the corporate offer was arbitrary, vexatious, or otherwise in bad faith. The court may, in its discretion, apportion and assess all or a part of the costs, expenses, and fees incurred by one or more of the dissenting shareholders who are parties to the proceeding against the corporation if the court finds that

- (1) the fair value of the shares materially exceeds the amount that the corporation offered to pay;
- (2) an offer or required advance payment was not made by the corporation as provided in AS 10.06.578;
- (3) the corporation failed to institute the special proceeding within the period specified under (a) of this section;

or

(4) the action of the corporation in complying with its obligations as provided in this chapter was arbitrary, vexatious, or otherwise in bad faith.

(f) Unless prohibited by AS 10.06.578(g), within 60 days after the final determination of the proceeding, the corporation shall pay to each dissenting shareholder who is a party the amount determined under (e) of this section in exchange for the surrender of the certificate representing the dissenter's shares or the dissenter's shares if the shares are uncertificated. Upon payment of the judgment, the dissenting shareholder ceases to have an interest in the shares.

**Sec. 10.06.582. Status of shares acquired from dissenting shareholders.** Shares acquired by a corporation under AS 10.06.578 and 10.06.580 shall be held and disposed of by the corporation as other shares reacquired under AS 10.06.388, except that, in the case of a merger or consolidation, they shall be held and disposed of as the plan of merger or consolidation may otherwise provide.

**Sec. 10.06.590. Conversion to limited liability company.** *[Repealed, Sec. 29 ch 60 SLA 2013.]*

**Sec. 10.06.595. Application of provisions.** Except as provided by AS 10.55.201(c)(1)(A) and 10.55.301(d), a corporation may enter into a merger, interest exchange, conversion, or domestication under AS 10.55. AS 10.06.566 and 10.06.568 do not apply to mergers, interest exchanges, conversions, and domestications that are covered by AS 10.55.

**Sec. 10.06.600. Definitions.** In AS 10.06.530 - 10.06.590,

- (1) "consolidation" means a consolidation authorized by AS 10.06.534 or 10.06.562;
- (2) "merger" means a merger authorized by AS 10.06.530 or 10.06.562;
- (3) "share exchange" means a share exchange authorized by AS 10.06.538 or an exchange of shares covered by AS 10.06.562.

## **ARTICLE 9. DISSOLUTION**

### **Section**

- 605. Voluntary dissolution by vote or written consent of shares, or by approval of the board**
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**Sec. 10.06.605. Voluntary dissolution by vote or written consent of shares, or by approval of the board.** (a) A corporation may elect voluntarily to wind up and dissolve by

(1) the vote of shareholders taken at a special or annual meeting with notice under AS 10.06.410 to each shareholder entitled to vote at the meeting and stating that the purpose, or one of the purposes, of the meeting is to consider approval of voluntary dissolution of the corporation; at the meeting the election to voluntarily dissolve is adopted upon receiving the affirmative votes of two-thirds or more of the shares of the corporation entitled to vote, unless any class of shares is entitled to vote as a class, in which case the election is adopted upon receiving the affirmative vote of two-thirds or more of the shares of each class entitled to vote as a class and of two-thirds or more of the shares entitled to vote; or

(2) written consent of the shares taken without a meeting under AS 10.06.423.

(b) A corporation may elect by approval of the board to wind up and dissolve if the corporation has

(1) been adjudicated bankrupt;

(2) disposed of all of its assets and has not conducted any business for a period of five years immediately preceding the adoption of the resolution to dissolve the corporation; or

(3) issued no shares.

**Sec. 10.06.608. Certificate of election: contents, signing, and filing.** (a) A corporation that has elected to wind up and dissolve shall immediately file a certificate evidencing the election as provided in this section.

(b) The certificate must be an officers' certificate or shall be signed by at least a majority of the directors then in office, by one or more shareholders authorized to do so by the shareholders holding shares representing 50 percent or more of the voting power, or by the officer or shareholder designated in the written consent and must set out

(1) the name of the corporation, the names and addresses of its officers under AS 10.06.483, the names and addresses of its directors, and the statement that the corporation has elected to wind up and dissolve;

(2) the number of shares voting for the election if the election was made by the vote of shareholders and a statement that the election was made by shareholders representing at least two-thirds of the voting power under AS 10.06.605(a)(1);

(3) a copy of the written consent signed by all shareholders of the corporation if the election was made by the written consent of the shares;

(4) circumstances showing the corporation to be within one of the categories described in AS 10.06.605(b) if the election was made by the board under that subsection.

(c) An original and an exact copy of the certificate conforming to (b) of this section shall be delivered to the commissioner for processing according to AS 10.06.910.

**Sec. 10.06.610. Revocation of election; contents, signing, and filing of certificate.** (a) A voluntary election to wind up and dissolve under AS 10.06.605 may be revoked before distribution of assets by an election to revoke made in the same manner as an election under AS 10.06.605. A certificate evidencing the election to revoke shall be signed and filed in the manner prescribed in AS 10.06.608.

(b) The certificate must set out

(1) that the corporation has revoked its election to wind up and dissolve;

(2) that no assets have been distributed as a result of the election;

(3) the number of shares voting for the revocation and the total number of outstanding shares the holders of which were entitled to vote on the revocation, if the election to revoke was made by the vote of shareholders;

(4) a copy of the written consent signed by all shareholders of the corporation if the election to revoke was made by the written consent of the shares;

(5) the resolution of the board if the election to revoke was made by the board.

**Sec. 10.06.613. Effective date of revocation and effect of revocation.** Revocation of a voluntary dissolution proceeding is effective upon compliance with AS 10.06.610 and the corporation may again carry on its business.

**Sec. 10.06.615. Commencement and conduct of voluntary proceedings for winding up; cessation of business; notice.** (a) Voluntary proceedings for winding up the corporation commence upon the resolution of shareholders or directors of the corporation electing to wind up and dissolve, or upon the filing with the corporation of a written consent of the shareholders.

(b) If a voluntary proceeding for winding up has commenced, the board shall continue to act as a board and has powers as provided in (c) of this section to wind up and settle its affairs, both before and after the filing of the certificate of dissolution.

(c) If a voluntary proceeding for winding up has commenced, the corporation shall cease to carry on business except to the extent necessary for the beneficial winding up of its business and except during the period the board considers necessary to preserve the corporation's goodwill or going-concern value pending a sale of its business or assets, in whole or in part. The board shall give written notice of the commencement of the proceeding for voluntary winding up by mail to all shareholders and all known creditors and claimants whose addresses appear on the records of the corporation. It is unnecessary to give notice to shareholders who voted in favor of winding up and dissolving the corporation.

**Sec. 10.06.618. Judicial supervision of voluntary winding up; petition and notice; order protecting shareholders and creditors.** If a corporation is in the process of voluntary winding up, a court, upon the petition of the corporation, a five-percent shareholder, or three or more creditors, and upon notice to the corporation and to other persons interested in the corporation as shareholders and creditors as the court may order, may take jurisdiction over the voluntary winding-up proceeding if it appears necessary for the protection of any parties in interest. The court, if it assumes jurisdiction, may make orders as to any and all matters concerning the winding up of the affairs of the corporation and for the protection of its shareholders and creditors of the corporation.

**Sec. 10.06.620. Articles of dissolution: contents.** If a corporation has been completely wound up without court proceedings, a majority of the directors then in office shall sign articles of dissolution stating that

- (1) the corporation has been completely wound up;
- (2) its known debts and liabilities have been actually paid, or adequately provided for under AS 10.06.668, or paid or adequately provided for as far as the assets of the corporation permit, or that it has incurred no known debts or liabilities; if there are known debts or liabilities for which adequate provision for payment has been made, the articles of dissolution must state what provision has been made, setting out the name and address of the corporation, person, or governmental agency that has assumed or guaranteed payment, or the name and address of the depository with which deposit has been made and such other information as may be necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability;
- (3) its known assets have been distributed to shareholders, or, if there are no shareholders, to persons entitled to the assets, or wholly applied or deposited on account of its debts and liabilities or that it acquired no known assets;
- (4) the corporation is dissolved.

**Sec. 10.06.623. Filing of articles of dissolution.** An original and an exact copy of the articles of dissolution shall be delivered to the commissioner for processing according to AS 10.06.910 and for issuance of a certificate of dissolution.

**Sec. 10.06.625. Effect of certificate of dissolution.** Upon the issuance of a certificate of dissolution, the existence of the corporation ceases, except for the purpose of suits, other proceedings, and appropriate corporate action by shareholders, directors, and officers as provided in this chapter.

**Sec. 10.06.628. Involuntary dissolution by verified complaint; filing; intervention by shareholder or creditor.** (a) A verified complaint for involuntary dissolution of a corporation on any of the grounds specified in (b) of this section may be filed in the superior court by the following persons:

- (1) one-half or more of the directors in office;
- (2) a shareholder or shareholders who hold shares representing not less than 33 1/3 percent of the total number of outstanding shares, assuming conversion of preferred shares convertible into common shares, or of the outstanding common shares, or of the equity of the corporation, exclusive of shares owned by persons who have personally participated in any of the transactions enumerated in (b)(4) of this section;
- (3) a shareholder if the ground for dissolution is that the period for which the corporation was formed has terminated without extension; or
- (4) another person expressly authorized to do so in the articles.

(b) The grounds for involuntary dissolution are:

- (1) the corporation has abandoned its business for more than one year;
- (2) the corporation has an even number of directors who are equally divided and cannot agree as to the management of its affairs, so that its business can no longer be conducted to advantage or so that there is danger that its property and business will be impaired or lost, and the holders of the voting shares of the corporation are so divided into factions that they cannot elect a board consisting of an uneven number;
- (3) there is internal dissension and two or more factions of shareholders in the corporation are so deadlocked that its business can no longer be conducted with advantage to its shareholders, or the shareholders have failed at two consecutive annual meetings at which all voting power was exercised to elect successors to directors whose terms have expired or would have expired upon election of their successors;
- (4) those in control of the corporation have been guilty of or have knowingly countenanced persistent and pervasive fraud, mismanagement or abuse of authority or persistent unfairness toward shareholders, or the property of the corporation is being misapplied or wasted by its directors or officers;
- (5) in the case of any corporation with 35 or fewer shareholders of record, liquidation is reasonably necessary for the protection of the rights or interests of the complaining shareholder or shareholders; or
- (6) the period for which the corporation was formed has terminated without extension.

(c) Before the trial of the action a shareholder or creditor of the corporation may intervene.

(d) For purposes of this section, "shareholder" includes a beneficial owner of shares who has entered into an agreement under AS 10.06.425(a).

**Sec. 10.06.630. Avoiding dissolution by verified complaint; purchase of plaintiff's shares; determination of fair value; stay; appraisal; award; appeal.** (a) Subject to a contrary provision in the articles of incorporation, in a suit for involuntary dissolution under AS 10.06.628 the corporation or, if it does not elect to purchase, the holders of 50 percent or more of the voting power of the corporation, the "purchasing parties", may avoid the dissolution of the corporation and the appointment of a receiver by purchasing for cash the shares owned by the plaintiffs, the "moving parties", at their fair value. The fair value shall be determined on the basis of the liquidation value, taking into account the possibility of sale of the entire business as a going concern in a liquidation. The election of the corporation to purchase may be made by the approval of the outstanding shares excluding shares held by the moving parties.

(b) If the purchasing parties elect to purchase the shares owned by the moving parties, and are unable to agree with the moving parties upon the fair value of the shares, and give bond with sufficient security to pay the estimated reasonable expenses, including attorney fees, of the moving parties if the expenses are recoverable under (c) of this section, the court upon application of the purchasing parties shall stay the winding up and dissolution proceeding and shall proceed to ascertain and fix the fair value of the shares owned by the moving parties.

(c) The court shall appoint three disinterested appraisers to appraise the fair value of the shares owned by the moving parties, and shall make an order referring the matter to the appraisers for the purpose of ascertaining the value of the shares. The order shall prescribe the time and manner of producing evidence if evidence is required. The award of the appraisers or of a majority of the appraisers, when confirmed by the court, is final and conclusive upon all parties. The court shall enter a decree that provides in the alternative for winding up and dissolution of the corporation unless payment is made for the shares within the time specified by the decree. If the purchasing parties do not make payment for the shares within the time specified, judgment shall be entered against the purchasing parties and the surety or sureties on the bond for the amount of the expenses, including attorney fees, of the moving parties. A shareholder aggrieved by the action of the court may appeal.

(d) If the purchasing parties desire to prevent the winding up and dissolution, they shall pay to the moving parties the value of their shares as provided under this section less an allowance for the costs of the appraisal as the court shall determine. In the case of an appeal, the purchasing parties shall pay to the moving parties the value of the shares and costs of appraisal as fixed on appeal. On receiving payment or the tender of payment as determined by the court, the moving parties shall transfer their shares to the purchasing parties.

(e) For the purposes of this section, "shareholder" includes a beneficial owner of shares who has entered into an agreement under AS 10.06.425(a).

**Sec. 10.06.633. Involuntary dissolution by the commissioner: grounds, procedure, reinstatement.** (a) A corporation may be dissolved involuntarily by the commissioner if

(1) the corporation is delinquent six months in filing its biennial report or in paying its biennial corporation tax or a penalty;

(2) the corporation has failed for 30 days to appoint and maintain a registered agent in the state;

(3) the corporation has failed for 30 days after change of its registered office or registered agent to file in the office of the commissioner a statement of the change;

(4) the corporation has failed for two years to complete dissolution under a certificate of election under AS 10.06.608 to dissolve;

(5) a vacancy on the board of the corporation is not filled within six months or the next annual meeting, whichever occurs first;

(6) a misrepresentation of material facts has been made in the application, report, affidavit, or other document submitted under this chapter; or

(7) the corporation is 90 days delinquent in filing notice of change of an officer, director, alien affiliate, or five percent shareholder, as required by this chapter.

(b) A corporation may not be dissolved under this section unless the commissioner has given the corporation written notice of its delinquency, failure, or noncompliance by mail as provided by (i) of this section. If the corporation fails, within 60 days after the requirements of (i) of this section have been satisfied, to contest the alleged neglect, omission, delinquency, or noncompliance by a written request for a hearing conducted by the office of administrative hearings (AS 44.64.010) or fails to correct the asserted neglect, omission, delinquency, or noncompliance, it may be dissolved under (d) of this section.

(c) If, following a hearing, the commissioner determines the presence of neglect, omission, delinquency, or noncompliance providing grounds for involuntary dissolution under this section, the corporation may appeal to the superior court by filing with the clerk of the court a notice of appeal setting out a copy of the notice given by the commissioner under (b) of this section together with a copy of a timely demand for a hearing by the corporation, and a copy of an affirmation by the commissioner of an intention to dissolve under (d) of this section. The matter shall be tried de novo by the superior court, and the court shall either sustain the commissioner or direct the commissioner to take action the court considers proper.

(d) If a corporation has given cause for involuntary dissolution and has failed to correct the neglect, omission, delinquency, or noncompliance as provided in this section, and there has been no order of the superior court, the commissioner shall dissolve the corporation by issuing a certificate of involuntary dissolution containing a statement that the corporation has been dissolved, the date, and the reason for which it was dissolved. The original certificate of dissolution shall be placed in the department files and a copy of it mailed to the corporation as provided by (i) of this section. Upon the issuance of the certificate of involuntary dissolution, the existence of the corporation ceases, except as otherwise provided in this section, and its name shall be available to and may be adopted by another corporation no less than six months after the dissolution.

(e) A corporation dissolved under this section may be reinstated within two years from the date of the certificate of involuntary dissolution if it is established to the satisfaction of the commissioner that in fact there was no cause

for the dissolution, or if the neglect, omission, delinquency, or noncompliance resulting in dissolution has been corrected and payment made of double the amount delinquent along with the amount the corporation would have paid had it not been dissolved during the two-year period. Reinstatement may not be authorized if the name is not available for corporate use under AS 10.06.105(d) unless the corporation being reinstated amends its articles of incorporation to change its name to conform with the provisions of this chapter.

(f) Nothing in this section relieves a corporation reinstated under this section from penalty or forfeiture of its powers in a case of failure to pay subsequently accruing licenses and taxes imposed by a law of the state.

(g) An action arising out of a contract assigned by a corporation dissolved under this section may be brought in the name of the assignee. The fact of assignment and of purchase by the plaintiff shall be set out in the complaint or other process. The defense may avail itself of any defense the defense might have availed itself of in a suit upon the claim by the corporation had it not been dissolved under this section.

(h) Service of process on a corporation dissolved under this section shall be made in the same manner prescribed by law as if the corporation had not been dissolved.

(i) If the mailing of an item is required by (b) or (d) of this section, the commissioner shall first mail the item by certified mail to the corporation's registered office at the last known address of the registered office shown on the records of the commissioner. If the item mailed to the registered office is returned to the commissioner, the commissioner shall mail the item by first class mail to the registered agent of the corporation at the last known address of the registered agent shown on the records of the commissioner. If the item mailed to the registered agent is returned to the commissioner, the commissioner shall mail the item by first class mail to the president of the corporation at the last known address for the president shown on the records of the commissioner. If the name and address of the president are not shown on the records of the commissioner, the commissioner shall mail the item by first class mail to an officer shown on the records of the commissioner at the last known address shown on the records of the commissioner. If the name and address of an officer of the corporation are not shown on the records of the commissioner, the commissioner shall mail the item by first class mail to a member of the board of directors of the corporation at the last known address shown on the records of the commissioner. If the name and address of an officer or board member are not shown on the records of the commissioner, the commissioner is not required to mail the item again. If the item mailed to the president, other officer, or board member is returned to the commissioner, the commissioner is not required to mail the item again. If the address shown on the records of the commissioner for a mailing after the initial certified mailing is not different from the address for the previous mailing, the commissioner is not required to mail the item to the same address, but shall mail the item to the next required addressee whose address is different from the address for the returned mailing, and, if none of the mailings required after a returned mailing has an address that is different from the address for the returned mailing, the commissioner is not required to mail the item again. In this subsection, "item" means the notice required by (b) of this section or the certificate of involuntary dissolution under (d) of this section.

**Sec. 10.06.635. Commissioner's authority to bring action for involuntary dissolution; grounds; relief.** (a) In addition to other remedies provided by law, a corporation may be dissolved involuntarily by a decree of the superior court in an action filed by the commissioner when it is established that the corporation has

- (1) procured its certificate of incorporation through fraud;
- (2) continued to exceed or abuse the authority conferred upon it by law;
- (3) seriously violated a statute regulating corporations; or
- (4) violated a provision of law by an act or default that under the law is a ground for forfeiture of corporate existence.

(b) The court may order dissolution or other or partial relief as it considers just and expedient. The court also may appoint a receiver under AS 10.06.643 for winding up the affairs of the corporation or may order that the corporation be wound up by its board subject to the supervision of the court.

**Sec. 10.06.638. Commencement of commissioner's action; notice; default.** (a) An action for the involuntary dissolution of a corporation under AS 10.06.635 shall be commenced by the commissioner in the superior court.

(b) Summons shall issue and be served as in civil actions. If no registered agent or office is found to serve, the commissioner shall publish notice as in civil cases in a newspaper published in the judicial district where the registered office of the corporation is situated, containing a notice of the pendency of the action, the title of the court, the title of the action, and the date on or after which default may be entered. The commissioner may include in one notice the names of any number of corporations against which actions are pending in the same court.

(c) The commissioner shall mail a copy of the notice to an office of the corporation, if one is known, within 10 days after the first publication of the notice.

(d) Notice shall be published at least once each week for two successive weeks, and the first publication may begin after the summons has been returned.

(e) Unless a corporation is served with summons, a default may not be taken against the corporation earlier than 30 days after the first publication of notice.

**Sec. 10.06.640. Appointment of provisional director upon deadlock.** (a) If the ground for the complaint for involuntary dissolution of the corporation is a deadlock in the board as set out in AS 10.06.628(b)(2), the court may appoint a provisional director.

(b) A provisional director shall be an impartial person, who is neither a shareholder nor a creditor of the corporation, nor related according to the common law by consanguinity or affinity within the third degree to a director of the corporation or to a judge of the court by which the provisional director is appointed. A provisional director has all the rights and powers of a director until the deadlock in the board is broken or until the provisional director is removed by order of the court or by approval of the outstanding shares.

(c) Unless otherwise agreed the compensation of the provisional director shall be fixed by the court.

**Sec. 10.06.643. Appointment of receiver: application, hearing and notice, security, qualifications, powers, compensation.** (a) If, at the time of the filing of a complaint for involuntary dissolution under AS 10.06.628 or at any time after the filing, the court has reasonable grounds to believe that unless a receiver of the corporation is appointed the interests of the corporation and its shareholders will suffer pending the hearing and determination of the complaint, upon the application of the plaintiff and after a hearing upon notice to the corporation as the court may direct, the court may appoint a receiver to take over and manage the business and affairs of the corporation and to preserve its property pending the hearing and determination of the complaint for dissolution.

(b) A receiver shall be a citizen of the United States or a corporation authorized to act as receiver. A corporate receiver may be a domestic corporation or a foreign corporation authorized to transact business in the state. A receiver shall give bond and provide sureties as the court may require.

(c) The compensation of the receiver shall be paid out of the assets of the corporation and unless otherwise agreed shall be fixed by the court.

**Sec. 10.06.645. Decree for winding up and dissolution: further judicial relief.** After hearing, the court may decree a winding up and dissolution of the corporation as provided in AS 10.06.625 or, with or without winding up and dissolution, may make orders and decrees and issue injunctions in the case as justice and equity may require.

**Sec. 10.06.648. Commencement and conduct of involuntary proceedings for winding up; cessation of business; notice.** (a) Involuntary proceedings for winding up commence when an order for winding up is entered under AS 10.06.635(b) or 10.06.645.

(b) If an involuntary proceeding for winding up has commenced, the board shall conduct the winding up of the affairs of the corporation, subject to the supervision of the court, unless other persons are appointed by the court to conduct the winding up. The directors or other persons may, subject to any restrictions imposed by the court, exercise all their powers through the executive officers of the corporation without an order of the court.

(c) If an involuntary proceeding for winding up has commenced, the corporation shall cease to carry on business except to the extent necessary for the beneficial winding up of the business and except during a period board may consider necessary to preserve the corporation's goodwill or going-concern value pending a sale of its business or assets, in whole or in part. The directors shall mail written notice of the commencement of the proceeding for involuntary winding up to all shareholders and to all known creditors and claimants whose addresses appear on the records of the corporation, unless the order for winding up has been stayed by appeal or otherwise or the proceeding or the execution of the order has been enjoined.

**Sec. 10.06.650. Jurisdiction of court.** If an involuntary proceeding for winding up has been commenced, the jurisdiction of the court includes

(1) the determination of the validity of all claims and demands against the corporation, whether due or not yet due, contingent, unliquidated, or sounding only in damages, and the barring from participation of creditors and claimants failing to make and present claims and proof as required by an order;

(2) the determination or compromise of all claims against the corporation or any of its property, and the determination of the amount of money or assets required to be retained to pay or provide for the payment of claims;

(3) the determination of the rights of shareholders in and to the assets of the corporation;

(4) the supervision of the presentation and filing of intermediate and final accounts of the directors or other persons appointed to conduct the winding up and hearing thereon, the allowance, disallowance or settlement of the accounts, and the discharge of the directors or the other persons from their duties and liabilities;

(5) the appointment of a master to hear and determine any or all matters, with the power or authority the court considers proper;

(6) the filling of vacancies on the board that the directors or shareholders are unable to fill;

(7) the removal of a director if it appears that the director has been guilty of dishonesty, misconduct, neglect, or abuse of trust in conducting the winding up or if the director is unable to act; the court may order an election to fill the vacancy, and may enjoin, for the time it considers proper, the reelection of the removed director; the court, in

place of ordering an election, may appoint a director to fill the vacancy caused by the removal; a director appointed by the court serves until the next annual meeting of shareholders or until a successor is elected or appointed;

(8) staying the prosecution of a suit, proceeding, or action against the corporation and requiring the parties to present and prove their claims in the manner required of other creditors;

(9) the determination of whether adequate provision has been made for payment or satisfaction of all debts and liabilities not actually paid;

(10) the making of orders for the withdrawal or termination of proceedings to wind up and dissolve, subject to conditions for the protection of shareholders and creditors;

(11) the making of an order, after the allowance or settlement of the final accounts of the directors or other persons, that the corporation is legally wound up and is dissolved;

(12) the making of orders for the bringing in of new parties as the court considers proper.

**Sec. 10.06.653. Claims against corporation; court and non-court directed winding up; presentation; notice; payment; secured claims; rejected claims.** (a) In a court-directed winding up of a corporation under AS 10.06.618, 10.06.628, 10.06.635, and 10.06.645, creditors and claimants may be barred from participation in a distribution of the general assets of the corporation if they fail to make and present claims and proofs within the time the court may order. The time in which to present claims may not be less than four nor more than six months after the first publication of notice to creditors unless it appears by affidavit that there are no claims, in which case the time may not be less than three months. If it is shown that a claimant did not receive notice because of absence from the state or other cause, the court may allow a claim to be filed or presented at any time before distribution is completed.

(b) Notice to creditors in a court-directed winding up shall be published not less than once a week for three consecutive weeks in a newspaper of general circulation, published in the judicial district in which the proceeding is pending or, if a newspaper is not published in that judicial district, in a newspaper designated by the court. The notice shall direct creditors and claimants to make claims and proofs to the person, at the place, and within the time specified in the notice. A copy of the notice shall be mailed to the last known address of each person shown as a creditor or claimant on the books of the corporation.

(c) A holder of a secured claim in a court-directed winding up may prove for the whole debt in order to secure payment of a deficiency. If a holder fails to present a claim, the holder is barred only as to any right against the general assets for a deficiency in the amount realized on the holder's security.

(d) Before a distribution in a court-directed winding up is made, the amount of an unmatured, contingent, or disputed claim against the corporation that has been presented and has not been disallowed, or the part of a claim to which the holder would be entitled if the claim were due, established, or absolute, shall, if presently reduced to cash, be paid to the commissioner of revenue. The amount shall be paid to the party entitled to the amount when the party becomes entitled or, if the party fails to establish a claim, the amount shall be distributed with the other assets of the corporation; the court may make other provision for payment of a claim, as it considers adequate. A creditor who has a claim that has been allowed but is not yet due is entitled to the present value of the claim upon distribution.

(e) Assets of the corporation subject to claims under this section and not reduced to cash shall be held pending distribution as creditors and claimants agree or as the court directs.

(f) If the ownership of shares of stock is in dispute, if the existence of a claim of a creditor or shareholder is contingent or contested, or if the amount of a claim of a creditor or shareholder is contingent, contested, or not determined, the maximum amount of the claims shall be reduced to cash and deposited with the commissioner of revenue. Amounts deposited with the commissioner of revenue under this subsection shall be paid to the creditor, shareholder, or the legal representative of the shareholder or creditor as the disputing parties may agree or a court may direct.

(g) Suits against the corporation on claims that have been rejected under (d) or (f) of this section shall be commenced within 30 days after written notice of rejection is given to the claimant.

**Sec. 10.06.655. Order declaring corporation wound up and dissolved; declarations; effect; additional orders; discharge of directors and other persons.** (a) Upon the final settlement of the accounts of the directors or other persons appointed under AS 10.06.648 and the determination that the corporation's affairs are in a condition for it to be dissolved, the court shall make an order declaring the corporation legally wound up and dissolved. The order shall declare that the

(1) corporation has been legally wound up, that any tax or penalty due under AS 10.06.805 - 10.06.870 has been paid or secured and that the other known debts and liabilities of the corporation have been paid or adequately provided for, or that taxes, penalties, debts, and liabilities have been paid as far as its assets permit; if adequate provision has been made for the payment of all known debts or liabilities, the order shall state what provision has been made, setting out the name and address of the corporation, person, or governmental agency that has assumed or guaranteed the payment, or the name and address of the depository with which deposit has been made or other

information as may be necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability;

(2) known assets of the corporation have been distributed to the persons entitled to the assets or that it acquired no known assets;

(3) accounts of directors or other persons appointed under AS 10.06.648 have been settled and that they are discharged from their duties and liabilities to creditors and shareholders;

(4) corporation is dissolved.

(b) The court may make additional orders and grant further relief as it considers proper upon the evidence submitted.

(c) Upon the making of the order declaring the corporation dissolved, corporate existence ceases except for the purposes of further winding up if needed. The directors or other persons appointed under AS 10.06.648 shall be discharged from their duties and liabilities, except as needed to complete the winding up.

**Sec. 10.06.658. Filing of decree of dissolution.** The clerk of the court shall file with the commissioner a certified copy of a court decree dissolving a corporation. A fee may not be charged for the filing of a decree of dissolution.

**Sec. 10.06.660. Powers and duties of directors and others in dissolution proceedings.**

The powers and duties of the directors or other persons appointed by the court under AS 10.06.648 and officers after commencement of a dissolution proceeding include, but are not limited to, the following acts in the name and on behalf of the corporation:

(1) to elect officers and to employ agents and attorneys to liquidate or wind up the affairs of the corporation;

(2) to continue the conduct of the business insofar as necessary for the disposal or winding up of the business;

(3) to carry out contracts and collect, pay, compromise, and settle debts and claims for or against the corporation;

(4) to defend suits brought against the corporation;

(5) to sue, in the name of the corporation, for sums due or owing to the corporation or to recover property of the corporation;

(6) to collect amounts remaining unpaid on subscriptions to shares or to recover unlawful distributions;

(7) to sell at public or private sale, exchange, convey, or otherwise dispose of all or any part of the assets of the corporation for cash in an amount considered reasonable by the board with or without compliance with the provisions of AS 10.06.568 and 10.06.570 and without dissenters' rights (AS 10.06.574 - 10.06.582) and upon terms, conditions, and other considerations the board considers reasonable or expedient;

(8) to execute bills of sale and deeds of conveyance in the name of the corporation;

(9) in general to make contracts and to do any and all things in the name of the corporation that may be proper or convenient for the purposes of winding up, settling, and liquidating the affairs of the corporation.

**Sec. 10.06.663. Proceeding to determine identity of directors or to appoint directors.** If the identity of a director or the right of a director to hold office is in doubt, if a director is dead or unable to act, if a director fails or refuses to act, or if the director's whereabouts cannot be ascertained, an interested person may petition the superior court to determine the identity of the director or, if there are no directors, to appoint directors to wind up the affairs of the corporation, after hearing upon such notice as the court may direct.

**Sec. 10.06.665. Distribution of corporate assets among shareholders or other persons; when to be made.** After determining that all of the known debts and liabilities of a corporation in the process of winding up have been paid or adequately provided for, the board shall distribute all the remaining corporate assets among the shareholders according to their respective rights and preferences or, if there are no shareholders, to the persons entitled to the assets. If the winding up is by court proceeding or subject to court supervision, the distribution may not be made until after the expiration of any period for the presentation of claims that has been prescribed by order of the court.

**Sec. 10.06.668. Provision for payment of debt or liability.** The payment of a debt or liability, whether the whereabouts of the creditor is known or unknown, has been adequately provided for if

(1) payment of the debt or liability has been assumed or guaranteed in good faith by one or more financially responsible corporations or other persons or by the United States government or an agency of the United States, and the provision was determined in good faith and with reasonable care by the board to be adequate at the time of distribution of the assets by the board under AS 10.06.605 - 10.06.678; or

(2) the amount of the debt or liability has been deposited as provided in AS 10.06.653.

**Sec. 10.06.670. Distribution in money, property, or securities; installments.** Distribution of assets may be made in money, in property, or in securities and either in installments or as a whole, if the distribution is done fairly

and ratably and in conformity with the articles of incorporation and the rights of the shareholders, and shall be made as soon as reasonably consistent with the beneficial liquidation of the corporate assets.

**Sec. 10.06.673. Plan of distribution; adoption; binding effect; notice; payment to dissenting shareholders; abandonment.** (a) If a corporation in the process of winding up has both preferred and common shares outstanding, a plan of distribution of the shares, obligations, or securities of another corporation, or of the assets of the corporation, other than money, that is not in accordance with the liquidation rights of the preferred shares as specified in the articles of incorporation may be adopted if approved by the board and by approval of the outstanding shares of each class. The plan may provide that the distribution is in complete or partial satisfaction of the rights of the preferred shareholders upon distribution and liquidation of the assets.

(b) A plan of distribution approved under (a) of this section is binding upon the shareholders except as provided in (c) of this section. The board shall mail notice of the adoption of the plan within 20 days after its adoption to all holders of shares having a liquidation preference.

(c) Shareholders having a liquidation preference who dissent from the plan of distribution are entitled to be paid the amount of their liquidation preference in cash if they file written demand for payment with the corporation within 30 days after the date of mailing of the notice of the adoption of the plan of distribution unless the plan of distribution is abandoned. The demand shall state the number and class of the shares held of record by the shareholder for which the shareholder claims payment.

(d) If a demand for cash payment is filed under (c) of this section, the board in its discretion may abandon the plan without further approval by the outstanding shares and the shareholders shall be entitled to distribution according to their rights and liquidation preferences in the process of winding up.

**Sec. 10.06.675. Recovery of amounts improperly distributed.** (a) If a distribution of assets has been made in the process of winding up a corporation without a court order and without prior payment or adequate provision for payment of the debts and liabilities of the corporation, the amount improperly distributed to a shareholder may be recovered by the corporation. Shareholders who received an improper distribution may be joined as a party in the same action.

(b) Suit may be brought in the name of the corporation to enforce the liability under (a) of this section against a shareholder receiving an improper distribution by a creditor of the corporation, whether or not the creditor has reduced the claim of the creditor to judgment.

(c) A shareholder who satisfies a liability under this section has the right of ratable contribution from other distributees who are similarly liable. A shareholder who has been compelled to return to the corporation more than the shareholder's ratable share of the amount needed to pay the debts and liabilities of the corporation may require that the corporation recover from any or all of the other distributees the proportion of the amounts received by them by the improper distribution necessary to give contribution to shareholders held liable under this section and to make the distribution of the assets fair and ratable, according to the respective rights and preferences of the shares, after payment or adequate provision for payment of all the debts and liabilities of the corporation.

(d) In this section, "process of winding up" includes proceedings under AS 10.06.605 - 10.06.678 and other distributions of assets to shareholders made in contemplation of termination or abandonment of the corporate business.

**Sec. 10.06.678. Continued existence of dissolved corporations; purposes; abatement or commencement of actions; distribution of omitted assets.** (a) A corporation that is dissolved voluntarily or involuntarily continues to exist for the purpose of winding up its affairs, defending actions against it, and enabling it to collect and discharge obligations, dispose of and convey its property, and collect and divide its assets. A dissolved corporation does not continue to exist for the purpose of continuing business except so far as necessary for winding up the business.

(b) An action or proceeding to which a corporation is a party does not abate by the dissolution of the corporation or by reason of proceedings for winding up and dissolution of the corporation. A corporation that is dissolved voluntarily or involuntarily may not commence a court action, except for a court action under AS 10.06.675.

(c) Assets inadvertently or otherwise omitted from the winding up continue as assets of the dissolved corporation for the benefit of persons entitled to the assets upon dissolution of the corporation and on realization the assets shall be distributed to the persons entitled.

(d) The directors of the corporation on the date of its dissolution or as determined under AS 10.06.663 shall exercise and enjoy the powers necessary to act under the terms of this section.

**ARTICLE 10.  
FOREIGN CORPORATIONS**

**Section**

- 705. Authorization of foreign corporation**
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**Sec. 10.06.705. Authorization of foreign corporation.** A foreign corporation may not transact business in this state until it has been issued a certificate of authority by the commissioner. A foreign corporation may not be issued a certificate of authority to transact business in this state that a corporation organized under this chapter is not permitted to transact. A foreign corporation may not be denied a certificate of authority because the laws of the state or country under which it is organized governing its organization and internal affairs differ from the laws of this state.

**Sec. 10.06.710. Liability for transacting business without certificate of authority.** A foreign corporation that transacts business in the state without a certificate of authority is liable to this state, for the years or portions of years during which it transacts business in the state without a certificate of authority, in an amount equal to all fees and corporation taxes that would have been imposed by this chapter on the corporation if it had applied for and received a certificate of authority to transact business in this state as required by this chapter and filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay the fees and corporation taxes, plus a penalty of up to \$10,000 per calendar year or portion of a calendar year for each year it transacts business in this state without a certificate of authority. The attorney general shall bring proceedings to recover amounts due the state under this section.

**Sec. 10.06.713. Certificate of authority as prerequisite for court proceedings.** A foreign corporation transacting business in this state without a certificate of authority may not maintain an action, suit, or proceeding in a court of this state until it obtains a certificate of authority. A successor or assignee of a foreign corporation transacting business without a certificate of authority may not maintain an action, suit, or proceeding in a court of this state on a right, claim, or demand arising out of the transaction of business by the corporation in this state until a certificate of authority is obtained by the corporation or by a corporation that has acquired all or substantially all of its assets.

**Sec. 10.06.715. Transacting business without certificate of authority not affecting contracts and right to defend action.** The failure of a foreign corporation to obtain a certificate of authority to transact business in this state does not impair the validity of a contract or act of the corporation, and does not prevent the corporation from defending an action, suit, or proceeding in a court of this state.

**Sec. 10.06.718. Activities not constituting transacting business in this state.** Without excluding other activities that may not constitute transacting business in this state, a foreign corporation is not considered to be transacting business in this state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:

- (1) maintaining, defending, or settling an action, suit, or administrative or arbitration proceeding, or the settlement of claims or disputes;
- (2) holding meetings of directors or shareholders of the corporation, or carrying on other activities concerning the internal affairs of the corporation;
- (3) maintaining bank accounts;
- (4) maintaining an office or agency for the transfer, exchange, and registration of securities of the corporation, or appointing and maintaining a trustee or depository for the securities of the corporation;
- (5) making sales through independent contractors;
- (6) soliciting or procuring orders by mail, through employees, agents, or otherwise, if the orders require acceptance outside the state before becoming binding contracts;
- (7) creating, as borrower or lender, or acquiring indebtedness or mortgages or other security interests in real or personal property;
- (8) securing or collecting debts, or enforcing rights in property securing debts;
- (9) transacting business in interstate commerce;
- (10) conducting an isolated transaction completed within a period of 30 days not in the course of a number of repeated transactions of like nature.

**Sec. 10.06.720. Corporate name of foreign corporation.** A certificate of authority may not be issued to a foreign corporation unless the corporate name of the corporation

- (1) contains the word "corporation", "company", "incorporated", or "limited", or an abbreviation of one of these words, or, for use in this state, adds at the end of its name one of these words or an abbreviation of one of them;
- (2) does not contain a word or phrase that indicates or implies that it is organized for a purpose other than the purpose contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance;
- (3) does not contain the word "city", "borough", or "village" or otherwise imply that the corporation is a municipality, but the name of a city, borough, or village may be used in the corporate name;
- (4) is available for corporate use under AS 10.06.105(d).

**Sec. 10.06.723. Assumed corporate name.** (a) If a foreign corporation applying for a certificate of authority has a name that is impermissible under any provision of AS 10.06.720, it shall select an assumed name, acceptable under the provisions of AS 10.06.720, under which it elects to do business in this state.

(b) The commissioner shall maintain records that cross-reference the actual and assumed names of all foreign corporations authorized to transact business in this state.

**Sec. 10.06.725. Change of name by foreign corporation.** If a foreign corporation authorized to transact business in this state changes its name to one under which a certificate of authority would not be granted to it, the certificate of authority of the corporation is suspended and it may not transact business in this state until it has changed its name to a name available to it under the laws of this state.

**Sec. 10.06.728. Application for certificate of authority.** To receive a certificate of authority to transact business in this state, a foreign corporation shall apply to the commissioner.

**Sec. 10.06.730. Contents of application.** The application must set out

- (1) the name of the corporation and the assumed name, if any, or if the name of the corporation does not contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of these words, the name of the corporation with the word or abbreviation that it elects to use in this state; and the state or country under whose laws it is incorporated;
- (2) the date of incorporation and the period of duration of the corporation;
- (3) the address of the principal office of the corporation in the state or country under whose laws it is incorporated;

(4) the address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent in this state at that address;

(5) the purpose the corporation proposes to pursue in the transaction of business in this state and the codes from the identification code established under AS 10.06.870 that most closely describe the activities in which the corporation will engage in this state;

(6) the names and addresses of the directors and officers of the corporation;

(7) a statement of the aggregate number of shares that the corporation may issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(8) a statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(9) a statement expressed in dollars of the amount of stated capital of the corporation;

(10) an estimate expressed in dollars of the

(A) value of all property to be owned by the corporation for the following year;

(B) value of the property of the corporation to be located in this state during the following year;

(C) gross amount of all business that will be transacted by the corporation during the following year; and

(D) gross amount of business that will be transacted by the corporation at or from places of business in this state during the following year;

(11) additional information necessary or appropriate to enable the commissioner to determine whether the corporation is entitled to a certificate of authority and to determine and assess the fees and taxes prescribed in this chapter that are payable;

(12) the name and address of each alien affiliate, the percentage of outstanding shares controlled by each alien affiliate, and a specific description of the nature of the relationship between the foreign corporation and its alien affiliate; or, a statement that there are no alien affiliates;

(13) the name and address of each person owning at least five percent of the shares, or five percent of any class of shares, and the percentage of the shares or class of shares owned by that person.

**Sec. 10.06.733. Forms for, and execution and filing of application for certificate of authority.** The application of the corporation for a certificate of authority shall be on forms prescribed and furnished by the commissioner. The application shall be executed by the president or vice-president of the corporation and by its secretary or an assistant secretary. The original application and an exact copy of it shall be delivered to the commissioner for processing according to AS 10.06.910 and for issuance of a certificate of authority.

**Sec. 10.06.735. Effect of certificate of authority.** Upon the issuance of a certificate of authority by the commissioner, the corporation may transact business in this state for the purpose set out in its application, subject, however, to the right of this state to suspend or revoke the authority as provided in this chapter.

**Sec. 10.06.738. Amended certificate of authority.** (a) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority if it changes its corporate name, or desires to pursue in this state other or additional purposes than those set out in its earlier application for a certificate of authority.

(b) The requirements for the form and contents of an application for an amended certificate of authority, the manner of its execution, the filing of the original application and an exact copy of it with the commissioner, and the issuance and effect of an amended certificate of authority shall be the same as in the case of an original application for a certificate of authority.

**Sec. 10.06.740. Status of foreign corporation.** A foreign corporation that has received a certificate of authority enjoys, until a certificate of revocation or of withdrawal has been issued as provided in this chapter, the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set out in the application under which the certificate of authority is issued and, except as otherwise provided in this chapter, is subject to the duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character.

**Sec. 10.06.743. Revocation of certificate of authority.** A certificate of authority of a foreign corporation to transact business in this state may be revoked by the commissioner when

(1) the corporation fails to file its biennial report within the time required by this chapter, or fails to pay fees, corporation taxes, or penalties prescribed in this chapter when they are due and payable;

(2) the corporation fails to appoint and maintain a registered agent in this state;

(3) the corporation fails, after change of its registered office or registered agent, to file with the commissioner a statement of the change as required by this chapter;

(4) the corporation fails to file with the department an amendment to its articles of merger within the time prescribed by this chapter;

(5) a misrepresentation of a material matter has been made in an application, report, affidavit, or other document submitted under this chapter; or

(6) the corporation is a party to an illegal combination in restraint of trade.

**Sec. 10.06.745. Limitations on revocation of certificate of authority.** The commissioner may not revoke a certificate of authority of a foreign corporation unless the

(1) commissioner has given the corporation at least 60 days notice by certified mail addressed to its registered office in this state; and

(2) corporation fails before revocation to file the biennial report, or pay the fees, corporation taxes, or penalties, or file the required statement of change of registered agent or registered office, or file the articles of merger, or correct the misrepresentation.

**Sec. 10.06.748. Issuance of certificate of revocation.** Upon revoking a certificate of authority, the commissioner shall

(1) issue a certificate of revocation in duplicate;

(2) file one of the certificates in the commissioner's office; and

(3) mail one of the certificates of revocation to the corporation at its registered office in this state under AS 10.06.753(1).

**Sec. 10.06.750. Effect of certificate of revocation.** Upon the issuance of the certificate of revocation, the authority of the corporation to transact business in this state ceases.

**Sec. 10.06.753. Registered office and registered agent of foreign corporation.** A foreign corporation authorized to transact business in this state shall have and continuously maintain in the state a registered

(1) office that may be, but need not be, the same as its place of business in this state; and

(2) agent, who may be either an individual resident in this state whose business office is identical to the registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this state, that has a business office identical to the registered office.

**Sec. 10.06.758. Change of registered office or registered agent of foreign corporation.** A foreign corporation authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing with the commissioner a statement setting out

(1) the name of the corporation;

(2) the address of its registered office;

(3) the address of the new registered office if the address of its registered office is to be changed;

(4) the name of its registered agent;

(5) the name of its new registered agent if its registered agent is to be changed;

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

(7) that the change is authorized by resolution adopted by the board of directors.

**Sec. 10.06.760. Filing of statement of change.** A statement of change under AS 10.06.758 shall be executed by the corporation by its president or a vice-president and delivered to the commissioner. If the commissioner finds that the statement conforms to the provisions of this chapter, the commissioner shall file the statement in the office of the commissioner and, upon the filing, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, becomes effective.

**Sec. 10.06.763. Service on foreign corporation.** The registered agent appointed by a foreign corporation authorized to transact business in this state shall be an agent of the corporation upon whom process, notice, or demand required or permitted by law to be served upon the corporation may be served.

**Sec. 10.06.765. Service on commissioner.** When a foreign corporation authorized to transact business in this state, or not authorized to transact business in this state but doing so, fails to appoint or maintain a registered agent in this state, or when a registered agent cannot with reasonable diligence be found at the registered office, or when the certificate of authority of a foreign corporation is suspended or revoked, the commissioner is an agent upon whom process, notice, or demand may be served. Service is made upon the commissioner as provided in AS 10.06.175(b).

**Sec. 10.06.768. Records kept by commissioner.** The commissioner shall keep a record of all processes, notices, or demands served upon the commissioner under AS 10.06.765 and shall record the time of service and action taken by the commissioner with reference to the service.

**Sec. 10.06.770. Procedure not exclusive.** AS 10.06.763 - 10.06.768 do not limit or affect the right to serve a process, notice, or demand required or permitted by law to be served upon a corporation in any other manner.

**Sec. 10.06.775. Organic change of foreign corporation.** If a foreign corporation authorized to transact business in this state is a party to an organic change permitted by the laws of the state or country where it is incorporated, and the corporation is the surviving corporation, it shall, within 30 days after the change becomes effective, file with the commissioner a copy of the articles of merger, consolidation, exchange, or reorganization authenticated by the proper office of the state or country under whose laws the organic change was carried out. It is not necessary for the corporation to obtain a new or amended certificate of authority to transact business in this state unless the name of the corporation is changed or unless the corporation desires to pursue in this state other or additional purposes than those that it is authorized to transact in this state.

**Sec. 10.06.778. Withdrawal of foreign corporation.** A foreign corporation authorized to transact business in this state may withdraw from this state upon obtaining from the commissioner a certificate of withdrawal. To obtain a certificate of withdrawal, the foreign corporation shall deliver to the commissioner an application for withdrawal.

**Sec. 10.06.780. Contents of application for withdrawal.** An application for withdrawal must set out

- (1) the name of the corporation and the state or country where it is incorporated;
- (2) that the corporation is not transacting business in this state;
- (3) that the corporation surrenders its authority to transact business in this state;
- (4) that the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in an action, suit, or proceeding based upon a cause of action arising in this state during the time the corporation was authorized to transact business in this state may be made on the corporation by service on the commissioner;
- (5) a post office address to which the commissioner may mail a copy of a process against the corporation that may be served on the commissioner;
- (6) a statement of the aggregate number of shares that the corporation may issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, as of the date of the application;
- (7) a statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, as of the date of the application;
- (8) a statement, expressed in dollars, of the amount of stated capital of the corporation, as of the date of the application;
- (9) additional information necessary or appropriate to enable the commissioner to determine and assess unpaid fees or corporate taxes payable as prescribed in this chapter.

**Sec. 10.06.783. Form and execution of application for withdrawal.** An application for withdrawal shall be made on forms prescribed and furnished by the commissioner and shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, or, if the corporation is in the hands of a receiver or trustee, the application shall be executed on behalf of the corporation by the receiver or trustee.

**Sec. 10.06.785. Filing of application for withdrawal.** An original and an exact copy of an application for withdrawal shall be delivered to the commissioner for processing according to AS 10.06.910 and for issuance of a certificate of withdrawal.

**Sec. 10.06.788. Effect of certificate of withdrawal.** Upon the issuance of a certificate of withdrawal, the authority of a corporation to transact business in this state ceases.

## ARTICLE 11. REPORTS, FILINGS, INTERROGATORIES, FEES, TAXES, PENALTIES, ENFORCEMENT, AND CANCELLATIONS

### Section

**805. Biennial report of domestic and foreign corporations**

**808. Contents of biennial report**

**811. Filing of biennial report**

- 813. Filing notice of change of officers, directors, five percent shareholders, and alien affiliates
- 815. Penalty for failure to file biennial report
- 818. Interrogatories by commissioner; judicial review
- 820. Confidentiality of information disclosed by interrogatories
- 823. Failure or refusal to answer interrogatories; filing of related documents
- 825. Penalty imposed upon officers and directors
- 828. Fees for filing articles and certain applications
- 830. Fees for filing certain documents related to agents
- 833. Payments and filing for withdrawal of foreign corporation
- 835. Fees on dissolution of domestic corporation
- 838. Payments and filing required for certificate of dissolution of foreign corporation
- 840. Fees for certified copies of documents
- 843. Other filing fees
- 845. Biennial corporation tax; penalty for nonpayment
- 848. Failure to pay tax or make report as precluding suit by corporation
- 850. Suits to compel tax payment; exemption from corporation tax
- 853. Failure to pay tax as evidence of inability to meet maturing debts and liabilities
- 855. Payments to be made in advance
- 858. Accounting for and deposit of taxes and fees paid
- 863. Appeal from revocation of certificate of authority
- 865. Cancellation of certificates issued and filings accepted
- 868. Forms to be furnished by the commissioner
- 870. Identification code

**Sec. 10.06.805. Biennial report of domestic and foreign corporations.** A domestic corporation and a foreign corporation authorized to transact business in this state shall file a biennial report within the time prescribed by this chapter.

**Sec. 10.06.808. Contents of biennial report.** A biennial report must set out

- (1) the name of the corporation and the state or country where it is incorporated;
- (2) 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, and, in the case of a foreign corporation, the address of its principal office in the state or country where it is incorporated;
- (3) a brief statement of the character of the business in which the corporation is engaged in this state and the codes from the identification code established under AS 10.06.870 that most closely describe the activities in which the corporation is engaged in this state;
- (4) the names and addresses of the directors and officers of the corporation;
- (5) a statement of the aggregate number of shares that the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;
- (6) a statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class;
- (7) the name and address of each alien affiliate, the percentage of outstanding shares controlled by each alien affiliate, and a specific description of the nature of the relationship between the corporation and its alien affiliates, or that there is no alien affiliate;
- (8) the name and address of each person owning at least five percent of the shares, or five percent of any class of shares as of September 30 of the second year of the biennial reporting period, and the percentage of the shares or class of shares owned by that person.

**Sec. 10.06.811. Filing of biennial report.** (a) A biennial report of a domestic or foreign corporation shall be filed with the department and is due before January 2 of the filing year. A domestic corporation filing articles of incorporation and a foreign corporation receiving a certificate of authority during an even-numbered year must file the biennial report each even-numbered year. A domestic corporation filing articles of incorporation and a foreign corporation receiving a certificate of authority during an odd-numbered year must file the biennial report each odd-numbered year. The biennial report is delinquent if not filed before February 1 of each odd or even year as provided in this section. Delinquent returns are subject to the penalty in AS 10.06.815.

(b) Proof to the satisfaction of the commissioner that on or before February 1 the report was deposited in the United States mail in a sealed envelope, properly addressed with postage prepaid, is compliance with (a) of this section.

(c) The commissioner shall file the report if it conforms to the requirements of this chapter. If the commissioner finds that the report does not conform to the requirements of this chapter, the report shall promptly be returned to the

corporation for necessary corrections. If the report is corrected to conform to the requirements of this chapter and returned to the commissioner in sufficient time to be filed before April 1 of the year in which it is due, the penalties for failure to file the report within the time provided in AS 10.06.815 do not apply.

(d) Upon receipt of a form from the commissioner, a domestic or foreign corporation must file a biennial report within six months after original incorporation or authorization to transact business in this state.

**Sec. 10.06.813. Filing notice of change of officers, directors, five percent shareholders, and alien affiliates.**

(a) In the event of a change of an officer, director, or alien affiliate of a corporation during the first year of the biennial reporting period or a change in a five percent shareholder before September 30 of the first year of the biennial reporting period, the corporation shall file a notice of change amending the biennial report of the corporation before the following January 2.

(b) The notice shall be filed with the commissioner and shall state the name and current mailing address of each director, officer, five percent shareholder, or alien affiliate not included in the corporation's last filed biennial report, and the name of the person replaced and the office held. The notice shall be signed by the president or vice-president of the corporation.

**Sec. 10.06.815. Penalty for failure to file biennial report.** A domestic or foreign corporation that fails or refuses to file a biennial report within the time set by this chapter is subject to a penalty of 10 percent of the amount of the corporation tax assessed against it for the period beginning January 1 of the year for which the report should have been filed. The commissioner shall assess the penalty at the time of the assessment of the corporation tax. If the amount of the corporation tax as originally assessed is adjusted in accordance with this chapter, the amount of the penalty shall also be adjusted to 10 percent of the amount of the adjusted corporation tax. The amount of the corporation tax and the amount of the penalty shall be separately stated in a notice to the corporation.

**Sec. 10.06.818. Interrogatories by commissioner; judicial review.** (a) The commissioner may propound to a domestic or foreign corporation and to an officer or director of a domestic or foreign corporation interrogatories reasonably necessary and proper to enable the commissioner to ascertain whether the corporation has complied with the provisions of this chapter.

(b) Interrogatories shall be propounded by the commissioner or the designee of the commissioner to

(1) a domestic corporation by complying with AS 10.06.175;

(2) a foreign corporation by complying with AS 10.06.763;

(3) an individual officer or director of a domestic or foreign corporation by mailing by certified mail a copy of the interrogatories addressed to the person at the place of business of the person in this state, or, if the person has no place of business in this state, to the principal office or place of business of the person.

(c) Interrogatories shall be answered within 30 days or within the additional time fixed by the commissioner or by the superior court. Answers shall be full and complete, in writing and under oath. If the interrogatories are directed to an individual, they shall be answered by that person, and if directed to a corporation they shall be answered by the president, vice-president, secretary, or assistant secretary of the corporation or, in the instance of a foreign corporation, the person or persons functioning as comparable officers in accordance with the laws of the state of incorporation.

(d) A petition stating good cause to extend the date for answer, to modify or set aside the interrogatories propounded by the commissioner, or to enforce compliance with AS 10.06.820 may be filed in the superior court before the expiration of the 30 days fixed in this section for answer.

**Sec. 10.06.820. Confidentiality of information disclosed by interrogatories.** Interrogatories and answers propounded and obtained under AS 10.06.818 are not open to public inspection and the commissioner may not disclose facts or information obtained from the interrogatories except as the official duty of the commissioner requires or unless the interrogatories or the answers are required for evidence in criminal proceedings or other action by the state.

**Sec. 10.06.823. Failure or refusal to answer interrogatories; filing of related documents.** Unless otherwise provided by an order of court issued in response to a petition filed under AS 10.06.818(d),

(1) a domestic or foreign corporation and each officer or director of a domestic or foreign corporation that fails or refuses to answer truthfully and fully interrogatories propounded by the commissioner within the time prescribed by AS 10.06.818(c) is guilty of a class A misdemeanor; and

(2) the commissioner need not file a document to which the interrogatories relate until the interrogatories are properly answered and need not file a document to which the interrogatories relate if the answers disclose that the document does not conform to the provisions of this chapter.

**Sec. 10.06.825. Penalty imposed upon officers and directors.** An officer or director of a domestic or foreign corporation who signs articles, or a statement, report, application, or other document filed with the commissioner that is known to the officer or director to be false in a material respect, is guilty of a class A misdemeanor.

**Sec. 10.06.828. Fees for filing articles and certain applications.** A domestic or foreign corporation that is required to file articles of incorporation, an application for a certificate of authority, amendatory articles, or other application with the department, except corporate entities organized under AS 10.20 and corporate entities organized under the laws of the United States or the laws of a state or territory of the United States or the laws of a foreign country for the same purposes as those allowed under AS 10.20, shall pay to the commissioner a filing fee established by the department by regulation. The filing fee shall be uniform and fixed without reference to the amount of authorized shares.

**Sec. 10.06.830. Fees for filing certain documents related to agents.** (a) A foreign corporation filing with the department a certificate of the appointment and consent of an agent residing in this state, or a certificate of revocation of the appointment of a resident agent, shall pay to the commissioner a fee established by the department by regulation.

(b) For filing a statement of change of address of registered agent under AS 10.06.170(a) or resignation under AS 10.06.170(b), the agent shall pay to the commissioner a fee established by the department by regulation.

**Sec. 10.06.833. Payments and filing for withdrawal of foreign corporation.** A foreign corporation that has been issued a certificate of authority under AS 10.06.705 may withdraw from this state upon payment of all biennial corporation taxes and penalties due at the time of desired withdrawal and by filing with the department an application for a certificate of withdrawal signed by its proper officers and under its corporate seal. The fee for filing the application with the commissioner shall be established by the department by regulation.

**Sec. 10.06.835. Fees on dissolution of domestic corporation.** A domestic corporation shall pay to the commissioner a fee established by the department by regulation for filing the documents required by this chapter for the dissolution of a domestic corporation.

**Sec. 10.06.838. Payments and filing required for certificate of dissolution of foreign corporation.** If a foreign corporation desires to file a certificate of dissolution from the state of its incorporation, it shall file the certificate, signed by the proper state officer, under seal, upon payment of all biennial corporation taxes and penalties due to this state at the time of dissolution. The filing fee for the certificate of dissolution shall be established by the department by regulation.

**Sec. 10.06.840. Fees for certified copies of documents.** The fee for furnishing a certified copy of a document shall be established by the department by regulation.

**Sec. 10.06.843. Other filing fees.** (a) The filing fee for a document not otherwise provided in this chapter shall be established by the department by regulation.

(b) The department may by regulation charge a corporation subject to this chapter a fixed fee in place of the fees specified in this chapter, and for routine administrative services rendered to a corporation by the department.

(c) Notwithstanding (b) of this section fees required under AS 10.06.140 and AS 10.06.828 are not included in a fixed fee.

**Sec. 10.06.845. Biennial corporation tax; penalty for nonpayment.** (a) A domestic corporation and a foreign corporation doing business in this state or having its articles of incorporation on file with the department shall, before January 2 of each filing year, pay to the commissioner a biennial corporation tax as follows: domestic corporation, \$100; foreign corporation, \$200. A corporation that fails to pay the biennial corporation tax before February 1 of the filing year must pay to the commissioner a penalty of \$25 for each year or part of a year of delinquency.

(b) Proof to the satisfaction of the commissioner that on or before February 1 the tax or report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, is compliance with (a) of this section.

(c) Corporate entities organized under AS 10.20 are not required to pay the biennial corporation tax imposed by this section.

**Sec. 10.06.848. Failure to pay tax or make report as precluding suit by corporation.** (a) A domestic or foreign corporation may not commence a suit, action, or proceeding in a court in this state without alleging and proving at the time it commences the suit, action, or proceeding that it has paid its biennial corporation tax last due

and has filed its biennial report for the last reporting period. A certificate of the payment of the biennial corporation tax and filing of the biennial report is prima facie evidence of the payment of the tax and the filing of the biennial report. The commissioner shall issue the certificate or a duplicate for a fee established by the department by regulation.

(b) A corporation that is dissolved involuntarily may commence an action under AS 10.06.675 without complying with (a) of this section.

(c) A foreign or domestic corporation that satisfies (a) of this section but is dissolved after commencing the suit, action, or proceeding may continue to maintain the action after the dissolution.

**Sec. 10.06.850. Suits to compel tax payment; exemption from corporation tax.** The commissioner may institute a suit in the name of the state to enforce the payment of a biennial corporation tax. Corporate entities organized under AS 10.20 and foreign corporations organized under the laws of the United States or the laws of a state or territory of the United States or the laws of a foreign country for the same purposes as those allowed under AS 10.20 are exempt from the payment of the biennial corporation tax.

**Sec. 10.06.853. Failure to pay tax as evidence of inability to meet maturing debts and liabilities.** Failure of a corporation to pay the biennial corporation tax for a period of one year after the date when payment first becomes due is prima facie evidence of the inability of a corporation to meet maturing debts and liabilities that may be shown under AS 10.06.360 by the state, a private person, or a corporation.

**Sec. 10.06.855. Payments to be made in advance.** Fees and charges provided for in this chapter, including the biennial corporation tax, shall be paid in advance.

**Sec. 10.06.858. Accounting for and deposit of taxes and fees paid.** (a) All fees and taxes paid under this chapter shall be accounted for and deposited in the general fund.

(b) *[Repealed, Sec. 28 ch 90 SLA 1991.]*

**Sec. 10.06.863. Appeal from revocation of certificate of authority.** If the commissioner revokes a certificate of authority of a foreign corporation to transact business in this state under this chapter, the foreign corporation may appeal to the superior court by filing with the clerk of the court a notice of appeal setting out a copy of its certificate of authority and a copy of the notice of revocation given by the commissioner. The matter shall be tried de novo by the superior court, and the court shall either sustain the action of the commissioner or direct the commissioner to take action the court considers proper.

**Sec. 10.06.865. Cancellation of certificates issued and filings accepted.** The commissioner may, within one year after a filing, and after written notice to the corporation or individual making the filing, cancel a certificate issued or filing accepted under this chapter, on any ground existing at the time of issuance or filing for which the commissioner could have originally refused to issue the certificate or accept the filing. The notice of cancellation must state the reason for the cancellation. A corporation or individual may request a hearing conducted by the office of administrative hearings (AS 44.64.010) within 90 days after receipt of the notice. Cancellation becomes final if the corporation or individual does not request a hearing within 90 days after receipt of notice. Notice of cancellation shall be sent by certified mail with return receipt requested. If the return receipt is not received by the department within a reasonable time and the department has made diligent inquiry as to the address of the corporation, notice may be made by publication in a newspaper of general circulation in the vicinity of the registered office of the corporation or the address of the individual who made the filing, and the cancellation becomes final 60 days after publication of the notice if the person or corporation does not request a hearing.

**Sec. 10.06.868. Forms to be furnished by the commissioner.** Reports required by this chapter to be filed with the department or the commissioner shall be on forms prescribed and furnished by the commissioner. Forms for other documents to be filed in the office of the department or the commissioner shall be furnished by the commissioner on request, but the use of those forms, unless required in this chapter, is not mandatory.

**Sec. 10.06.870. Identification code.** The commissioner shall establish and adopt a coded list of business activities and shall make the list available to the public.

**ARTICLE 12.**  
**MISCELLANEOUS PROVISIONS**

**Section**

- 905. Voting of shares; quorum; status of disqualified shares**
- 910. Processing of writings delivered to the commissioner**
- 915. Disapproval of writing by commissioner; appeal**
- 920. Correction of filed writings**
- 925. Writings and absence of filings as evidence**
- 930. Corporate seal as evidence**
- 935. Waiver of notice**

**Sec. 10.06.905. Voting of shares; quorum; status of disqualified shares.** (a) If the articles of incorporation provide for more or less than one vote for a share on a matter, a reference in this chapter to a majority or other proportion of shares means a majority or other proportion of the votes entitled to be cast on that matter. If shares are disqualified from voting on a matter, they may not be considered outstanding for the determination of a quorum at a meeting to act upon or for the required vote to approve action upon that matter.

(b) A requirement in this chapter for a vote of each class of outstanding shares means a vote regardless of limitations or restrictions upon the voting rights of that class, unless expressly limited to voting shares.

**Sec. 10.06.910. Processing of writings delivered to the commissioner.** If a writing delivered to the commissioner for filing conforms to law and all fees and corporation taxes prescribed in this chapter have been paid, the commissioner shall

- (1) endorse on each original and an exact copy the word "filed" and the date of the filing;
- (2) file the exact copy in the commissioner's office;
- (3) return the original of the writing, together with any writing issued by the commissioner attached to the original, to the corporation or its representative.

**Sec. 10.06.915. Disapproval of writing by commissioner; appeal.** If the commissioner fails to approve articles of incorporation, amendment, merger, consolidation, exchange or dissolution, or any other document required by this chapter to be approved by the commissioner, the commissioner shall, within 10 days after the delivery of the document to the commissioner, give written notice of disapproval to the person or domestic or foreign corporation, delivering the document, and specifying the reasons for disapproval. The person or corporation may appeal from the disapproval to the superior court by filing with the clerk of the court a notice of appeal setting out a copy of the document sought to be filed and a copy of the written disapproval. The matter shall be tried de novo by the superior court, which shall either sustain the action of the commissioner or direct the commissioner to take action the court considers proper.

**Sec. 10.06.920. Correction of filed writings.** A writing relating to a corporation filed by the commissioner under this chapter may be corrected if it contains an error apparent on the face or defect in the execution of the writing, including the deletion of a matter not permitted to be stated in the writing. A certificate, entitled "Certificate of Correction of . . . (correct title of writing and name of corporation)", shall be signed in the same manner as the original writing and shall be delivered to the commissioner. The certificate shall set out the name of the corporation, the date the writing to be corrected was filed by the commissioner, the provision in the writing corrected or eliminated, and, if the execution was defective, the proper execution. The filing of the certificate by the commissioner does not alter the effective time of the writing being corrected and does not affect any right or liability accrued or incurred before the filing. A corporate name may not be changed or corrected under this section.

**Sec. 10.06.925. Writings and absence of filings as evidence.** (a) A writing filed by the commissioner relating to a corporation and containing statements of fact required or permitted by law and a certification by the commissioner of the absence of a filing shall be received in all courts, public offices, and official bodies as prima facie evidence of these facts and of the execution of the writing.

(b) If under the laws of a jurisdiction other than this state a writing by an officer in that jurisdiction or a copy of a writing certified or exemplified by the officer may be received as prima facie evidence of the incorporation, existence, or capacity of any foreign corporation incorporated in that jurisdiction, the writing when exemplified shall be received by all courts, public offices, and official bodies of this state as prima facie evidence with the same force as in another jurisdiction. The writing or certified copy of the writing shall be received without being exemplified if it is certified by the secretary of state or official performing the equivalent function as to corporate records of that jurisdiction.

**Sec. 10.06.930. Corporate seal as evidence.** The presence of a corporate seal on a writing purporting to be executed by authority of a corporation shall be prima facie evidence that the writing was executed with the authority of the corporation.

**Sec. 10.06.935. Waiver of notice.** If notice is required to be given to a shareholder or director of a corporation under the provisions of this chapter or under the provisions of the articles or bylaws of the corporation, a waiver of the notice in writing signed by the person entitled to notice, whether before or after the time stated for notice, is equivalent to the giving of notice.

## ARTICLE 13. GENERAL PROVISIONS

### Section

**950. Powers of commissioner**

**953. Regulations**

**955. Application to existing corporations**

**958. Provisions construed as restatements and continuations**

**960. Corporations organized under Alaska Native Claims Settlement Act**

**961. Distributions by Native corporations to minors in the custody of a state**

**963. Severability**

**965. Reservation of power**

**968. Signature**

**970. Rules of construction and interpretation**

**990. Definitions**

**995. Short title**

**Sec. 10.06.950. Powers of commissioner.** The commissioner has the power and authority reasonably necessary to enable the commissioner to administer this chapter and to perform the duties imposed upon the commissioner by this chapter.

**Sec. 10.06.953. Regulations.** To the extent provided by explicit reference in this chapter, the department shall adopt regulations referred to in this chapter in accordance with the Administrative Procedure Act (AS 44.62).

**Sec. 10.06.955. Application to existing corporations.** (a) This chapter applies to a domestic corporation organized under former AS 10.05 (the Alaska Business Corporation Act), and to the extent provided in AS 10.06.010, 10.06.020, 10.06.233, 10.06.433(g), 10.06.435, 10.06.450(d), and 10.06.705 - 10.06.870 to a foreign corporation authorized to do or doing business in this state.

(b) The existence of a corporation formed or existing on the date of enactment of this chapter is not affected by the enactment of this chapter or by any change in the requirements for the formation of corporations.

**Sec. 10.06.958. Provisions construed as restatements and continuations.** If a provision of this chapter is substantially the same as a statutory provision in former AS 10.05 existing on July 1, 1989, it shall be construed as a restatement and continuation, and not as a new enactment.

**Sec. 10.06.960. Corporations organized under Alaska Native Claims Settlement Act.** (a) A corporation organized under 43 U.S.C. 1601 et seq. as amended (Alaska Native Claims Settlement Act) shall be incorporated under and is subject to this chapter except

(1) each corporation shall issue without further consideration the number of shares of common stock that may be necessary to comply with the requirements of the Act and all stock so issued is considered fully paid and nonassessable when issued;

(2) unless otherwise provided in the articles of incorporation, the capital

(A) is considered the consideration for the initial issuance of shares; and

(B) of a corporation organized under the Act includes the

(i) land or interests in it conveyed to the corporation by the United States under the Act, except that which is required to be conveyed under 43 U.S.C. 1613(c)(1), (3), and (4), entered at its fair value to the corporation upon receiving the conveyance of it; and

(ii) money, when received under 43 U.S.C. 1605 and 43 U.S.C. 1608, that is retained by the corporation and that is not immediately distributed or required to be distributed under 43 U.S.C. 1606(j).

(b) Notwithstanding the provision of AS 10.06.305 - 10.06.390, payment from the money of a corporation organized under the Act that is required by the language of the Act to be distributed to shareholders or to other corporations so organized is not a distribution to its shareholders as defined in AS 10.06.990.

(c) Notwithstanding the provisions of AS 10.06.546, a plan of merger, consolidation, or exchange in which each participating corporation either (1) was organized under the Act, within the same one of the 12 regions of Alaska established under the Act, or (2) resulted from the prior merger, consolidation, or exchange of other similarly organized corporations within the same region, is approved if it receives the affirmative vote of the holders of at least a majority of the outstanding shares of each corporation. If a class of shares of a corporation specified in this subsection is entitled to vote as a class, the plan of merger, consolidation, or exchange is approved if it receives the affirmative vote of the holders of at least a majority of the outstanding shares of each class of shares entitled to vote as a class and of the total outstanding shares. Notwithstanding AS 10.06.574 - 10.06.582, a plan of merger, consolidation, or exchange approved under this section before December 19, 1991, may not include a right of shareholders to dissent.

(d) *[Repealed, Sec. 21 ch 6 SLA 1993.]*

(e) Notwithstanding the provision of AS 10.06.502 - 10.06.510, a corporation organized under the Act may amend its articles by a vote of the board of directors in order for the corporation to comply with the mandatory requirements of the Act.

(f) Notwithstanding the other provisions of this chapter, a corporation organized under the Act is governed by the Act to the extent the Act is inconsistent with this chapter, and the corporation may take any action, including amendment of its articles, authorized by the Act, and the action is considered to be approved and adopted if approved under the Act. An amendment approved under the Act and delivered to the commissioner under AS 10.06.512 shall be filed by the commissioner under AS 10.06.910, and a certificate of amendment shall be issued.

(g) Notwithstanding AS 10.06.358, if there are no retained earnings, the directors of a corporation organized under the Act may declare and pay distributions in cash or property out of its net profits for the fiscal year in which the distribution is declared and for the preceding fiscal year, except when the corporation is insolvent under AS 10.06.360. For the purposes of this subsection, a corporation's debts include the amounts it is required to distribute under 43 U.S.C. 1606(i) and 43 U.S.C. 1606(j). The directors may determine the net profits derived from the exploitation or liquidation of wasting assets without consideration of the depletion of those assets resulting from lapse of time, consumption, liquidation, or exploitation, of the assets, and a distribution declared from those net profits shall be described, concurrently with distribution of the net profits to shareholders, as a distribution from wasting assets without consideration of the depletion of the assets. In this subsection, "wasting assets" means timber resources and subsurface estates.

(h) Notwithstanding AS 10.06.358, the directors of a corporation organized under the Act may, from time to time, distribute to its shareholders in partial liquidation a portion of the corporation's assets out of capital, in cash or property, except that a distribution

(1) may not be made at a time when the corporation is insolvent under AS 10.06.360;

(2) may not be made unless the articles of incorporation authorize the board to make the distribution or the distribution is authorized by the affirmative vote of the holders of at least two-thirds of the outstanding shares;

(3) when made, shall be identified as a distribution in partial liquidation and the amount per share shall be disclosed to the shareholders concurrently with the distribution.

(i) Notwithstanding AS 10.06.633(e), a corporation that is organized as a Native corporation under the Act, that has been involuntarily dissolved by the commissioner under AS 10.06.633, and that has failed to apply for reinstatement during the period established under AS 10.06.633(e), may be reinstated under AS 10.06.633(e) within one year of June 29, 1994. The reinstated corporation and its shareholders have all of the rights, privileges, liabilities, and obligations that would have applied to them if the corporation had not been dissolved, and all corporate and shareholder actions taken during the period of dissolution are considered to be as valid as if dissolution had not occurred.

(j) If a corporation is formed before June 29, 1994 to replace a Native corporation that has been involuntarily dissolved under AS 10.06.633, and if the replacing corporation has the same name as the dissolved corporation, the replacing corporation and its shareholders succeed, upon payment of any amounts that would have been required for the reinstatement of the dissolved corporation under AS 10.06.633(e), to all of the rights, privileges, liabilities, and obligations that would have applied to the dissolved corporation and its shareholders if the dissolved corporation had been reinstated under AS 10.06.633(e).

(k) Notwithstanding (i) of this section and AS 10.06.633(e), a corporation that is organized as a Native village corporation under the Act, that has been involuntarily dissolved by the commissioner under AS 10.06.633, and that has failed to apply for reinstatement during the period established under AS 10.06.633(e) may be reinstated under AS 10.06.633(e) on or before December 31, 2020. The reinstated corporation and its shareholders have all of the rights, privileges, liabilities, and obligations that would have applied to them if the corporation had not been dissolved, and all corporate and shareholder actions taken during the period of dissolution are considered to be as valid as if dissolution had not occurred. If a corporation elects to reinstate under this subsection and if the

corporation's previously used corporate name is no longer available for use by the corporation, then, notwithstanding AS 10.06.502 - 10.06.510, an amendment to the articles of incorporation changing the previously used corporate name may be adopted by action of the corporation's board of directors alone.

(l) [Renumbered as AS 10.06.504(d).]

(m) [Renumbered as AS 10.06.504(e).]

(n) Notwithstanding AS 10.06.504(d), an amendment to the articles of incorporation of a corporation organized under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act) and incorporated under former AS 10.05.005 to add a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages under AS 10.06.210(1)(M) may be adopted by the affirmative vote of a majority of the shares represented at the regular or special meeting at which a quorum is present in person, by proxy, or by remote communication.

(o) Notwithstanding AS 10.06.455(b) and 10.06.504(d), an amendment to the articles of incorporation of a village corporation organized under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act) and incorporated under former AS 10.05.005 to add a provision authorizing the classification of directors under AS 10.06.455 may be adopted by the affirmative vote of a majority of the shares represented at a regular or special meeting at which a quorum is present in person, by proxy, or by remote communication.

(p) Notwithstanding AS 10.06.504(d), a Native corporation incorporated under former AS 10.05 before July 1, 1989, may amend its articles under this subsection to reduce the quorum necessary to hold a meeting of shareholders to one-third of the outstanding shares entitled to vote at a meeting, represented in person, by remote communication, or by proxy. An amendment under this subsection is approved if it receives an affirmative vote of two-thirds of the shares represented in person, by remote communication, or by proxy at an annual meeting. The Native corporation may not use the reduced quorum established under this subsection to adopt other amendments of the articles or to adopt resolutions to which 43 U.S.C. 1629b applies. AS 10.06.504(d) continues to apply to the adoption of other amendments of the articles.

(q) In this section,

(1) "Act " means 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act);

(2) "Native corporation" has the meaning given in 43 U.S.C. 1602(m).

**Sec. 10.06.961. Distributions by Native corporations to minors in the custody of a state.** (a) Notwithstanding AS 13.46.085 or the appointment of a guardian of the property of the child under AS 47.10.010, when a child who is in the custody of this state under AS 47.10 or a minor who is in the custody of this state under AS 47.12 or of another state under a provision similar to AS 47.10 or AS 47.12 becomes entitled to receive dividends or other distributions resulting from the ownership of stock or a membership in a corporation organized under this chapter and under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act), the corporation paying the dividends or making the other distributions shall retain the dividends and other distributions in an interest bearing account for the benefit of the child or minor during the state custody.

(b) The corporation may not spend, obligate, or otherwise use the property held in an account established under (a) of this section unless the use is approved by a court.

(c) Upon presentation of proof of entitlement by the person entitled to distribution, the corporation shall distribute the property remaining in an account established under (a) of this section to the

(1) minor when the minor reaches the age of 18 years, whether or not the minor is still in the state custody;

(2) legal guardian of the minor, when the state custody terminates while the minor is less than 18 years of age;

(3) minor's heirs if the minor dies before the distribution.

(d) The retention and distribution of dividends and distributions under this section is not subject to AS 13.46.

(e) In this section, "minor" means a person under 18 years of age.

**Sec. 10.06.963. Severability.** If a provision of this chapter is held invalid, the invalidity does not affect other provisions of this chapter that can be given effect without the invalid provision.

**Sec. 10.06.965. Reservation of power.** The legislature reserves the right to alter, amend, suspend, or repeal in whole or in part this chapter at pleasure, or a certificate of incorporation or the authority to do business in this state, of a domestic or foreign corporation, whether or not existing or authorized on July 1, 1989.

**Sec. 10.06.968. Signature.** "Signature" includes a mark when the signer cannot write. The signer's name shall be written near the mark by a witness who shall write the witness' own name near the signer's name. A signature by mark can be acknowledged or can serve as a signature to a sworn statement.

**Sec. 10.06.970. Rules of construction and interpretation.** Unless a provision or the context otherwise requires, the following general provisions and rules of construction govern this chapter:

(1) title, chapter, article, and section headings do not affect the scope, meaning, or intent of the provisions of this chapter;

(2) when, by the provisions of this chapter, a power is granted to, or a duty imposed upon, a public officer, the power may be exercised or the duty performed by a deputy of the officer or by a person authorized, under law, by the officer, unless this chapter expressly provides otherwise;

(3) when a notice, report, statement, or record is required or authorized by this chapter, it shall be made in writing in a manner reasonably calculated to communicate the notice, report, statement, or record to the recipient;

(4) a reference in this chapter to mailing means first-class mail, postage prepaid, unless certified mail is specified; certified mail includes registered mail;

(5) subject to a specific accounting treatment required by a particular section of this chapter,

(A) references in this chapter to financial statements, balance sheets, income statements, and statements of changes in financial position of a corporation and references to assets, liabilities, earnings, retained earnings, and similar accounting items of a corporation mean financial statements or items prepared fairly and reasonably to present the purported matters;

(B) financial statements prepared or determined in accordance with generally accepted accounting principles then applicable are fair and reasonable;

(C) references in this chapter to financial statements mean, in the case of a corporation that has subsidiaries, consolidated statements of the corporation and its subsidiaries, and all references to accounting items mean items determined on a consolidated basis in accordance with consolidated financial statements;

(6) a reference in this chapter to the time a notice is given or sent means, unless otherwise expressly provided, the time a written notice by mail is deposited in the United States mail, postage prepaid; or the time any other written notice is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by electronic means to the recipient by the person giving the notice; or the time an oral notice is communicated in person or by electronic means to the recipient or to a person at the office of the recipient whom the person giving the notice has reason to believe will promptly communicate it to the recipient;

(7) when reference is made to any portion of this chapter or of any other law of this state, the reference applies to all amendments and additions;

(8) "shall" is mandatory, "may" is permissive, and "may not" is prohibitory.

**Sec. 10.06.990. Definitions.** In this chapter, unless the context otherwise requires,

(1) "acknowledged" means that a document is accompanied by a certificate of its acknowledgment as provided in AS 09.63.010 - 09.63.130;

(2) "affiliate" means a person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, a corporation subject to this chapter;

(3) "alien" means

(A) an individual who is not a citizen or national of the United States, or who is not lawfully admitted to the United States for permanent residence, or paroled into the United States under 8 U.S.C. 1101 — 1524 (Immigration and Nationality Act), as amended;

(B) a person, other than an individual, that was not created or organized under the laws of the United States or of a state, or whose principal place of business is not located in any state; or

(C) a person, other than an individual, that was created or organized under the laws of the United States or of a state, or whose principal place of business is located in a state, and that is controlled by a person described in (A) or (B) of this paragraph;

(4) "approved by the board" or "approval of the board" means approved or ratified by the vote of the board or by the vote of a committee authorized to exercise the powers of the board, except as to matters not within the competence of the committee under AS 10.06.468;

(5) "approved by the outstanding shares" or "approval of the outstanding shares" means approved by the affirmative vote of a majority of the outstanding shares entitled to vote; this approval includes the affirmative vote of a majority of the outstanding shares of each class or series entitled by the articles of incorporation or this chapter to vote as a class or series on the subject matter and also includes the affirmative vote of a greater proportion, including all, of the outstanding shares of a class or series if a greater proportion is required by the articles or this chapter;

(6) "approved by the shareholders" or "approval of the shareholders" means approved or ratified by the affirmative vote of a majority of the shares entitled to vote represented at a duly held meeting at which a quorum is present or by the written consent of shareholders (AS 10.06.423) or by the affirmative vote or written consent of a greater proportion, including all, of the shares of a class or series if a greater proportion is required by the articles of incorporation or this chapter for all or any specified shareholder action;

(7) "articles" or "articles of incorporation" means the original or restated articles of incorporation and all amendments and includes articles of merger;

(8) "authorized shares" means the shares of all classes that the corporation may issue;

- (9) "board" means the board of directors of a domestic or foreign corporation;
- (10) "commissioner" means the commissioner of commerce, community, and economic development or a designee of the commissioner;
- (11) "common shares" means shares that have no preference over other shares with respect to distribution of assets on liquidation or with respect to payment of dividends;
- (12) "control" means
- (A) owning directly or indirectly, or having the power to vote, 25 percent or more of a class of voting securities of a corporation subject to this chapter; or
- (B) influencing or affecting in any substantive manner the election of a majority of the directors or trustees of a corporation subject to this chapter;
- (13) "corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this chapter, but does not include a foreign corporation or a national bank;
- (14) "corporation tax" means the biennial corporation tax imposed under Alaska law on corporations;
- (15) "department" means the Department of Commerce, Community, and Economic Development;
- (16) "director" means a natural person designated in the articles of incorporation or elected by the incorporators as a director and includes a natural person and successor of that person designated, elected, or appointed by any other name or title to act as a director;
- (17) "distribution to its shareholders" means the transfer of cash or property by a corporation or its subsidiary to its shareholders without consideration, whether by way of dividend or otherwise, except a dividend in shares of the corporation, or the purchase or redemption of its shares for cash or property; the time of a distribution of a dividend is the date of the declaration of the dividend and the time of a distribution by purchase or redemption of shares is the date cash or property is transferred by the corporation, whether or not under a contract of an earlier date; however, if a negotiable debt security is issued in exchange for shares, the time of the distribution is the date when the corporation acquires the shares in the exchange; in the case of a sinking fund payment, cash or property is transferred within the meaning of this paragraph at the time that it is delivered to a trustee for the holders of preferred shares to be used for the redemption of those shares or physically segregated by the corporation in trust for that purpose;
- (18) "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of the communication and that may be directly reproduced in paper form by a recipient through an automated process;
- (19) "entire board" means the total number of directors that the corporation has if there are no vacancies;
- (20) "filed", unless otherwise expressly provided, means filed in the office of the commissioner;
- (21) "five percent shareholder" means a person owning at least five percent of the shares or five percent of any class of shares of a corporation;
- (22) "foreign corporation" means a corporation for profit organized under laws other than the laws of Alaska for a purpose for which a corporation may be organized under this chapter;
- (23) "independent accountant" means a certified public accountant or a public accountant who is independent of the corporation as determined in accordance with generally accepted auditing standards and who is engaged to audit financial statements of the corporation or perform other accounting services;
- (24) "liquidation preference" means amounts payable for shares of a class upon voluntary or involuntary dissolution, winding up or distribution of the entire assets of the corporation, including any cumulative dividends accrued and unpaid, in priority to shares of another class or classes;
- (25) "net assets" means the amount by which the total assets of a corporation exceed the total debts of the corporation;
- (26) "oath" includes affirmation;
- (27) "officers' certificate" means a certificate signed by the chair of the board, the president or a vice-president and by the secretary, the treasurer, or an assistant secretary or assistant treasurer;
- (28) "on the certificate" means that a statement appears on the face of a share certificate or on the reverse of the certificate with a reference to the statement on the face;
- (29) "organic change" means a merger, consolidation, share exchange, or sale of assets other than in the regular course of business;
- (30) "paid-in capital" means the consideration actually received by a corporation for issuance of its shares, plus any additional amount capitalized by its board under AS 10.06.390;
- (31) "parent" means an affiliate controlling a specified corporation directly or indirectly through one or more intermediaries;
- (32) "person" means an individual, a corporation, a partnership, an association, a joint-stock company, an estate, a trust if the interests of the beneficiaries are evidenced by a security, an unincorporated association, a government, a political subdivision of a government, or a combination of these entities;
- (33) "preferred shares" means shares other than common shares;

(34) "proxy" means a written authorization or an electronic transmission signed by a shareholder or the shareholder's attorney-in-fact giving another person power to vote with respect to the shares of the shareholder;

(35) "proxy holder" means the person to whom a proxy is given;

(36) "redemption price" means the amount in cash, property or securities, or any combination of these, payable on shares of any class or series upon the redemption of the shares; unless otherwise expressly provided, the redemption price is payable in cash;

(37) "retained earnings" means the account of the corporation representing undistributed and uncanceled net profits, income, gains, and losses from the date of incorporation;

(38) "series of shares" means those shares within a class that have the same rights, preferences, privileges, and restrictions but that differ in one or more rights, preferences, privileges, or restrictions from other shares within the same class;

(39) "shareholder" means a holder of record of a share in a corporation;

(40) "shares" means the units into which the proprietary interests in a corporation are divided;

(41) "signed," as it relates to proxies, means the placing of the shareholder's name on the proxy by manual signature by the shareholder or the shareholder's attorney-in-fact or by electronic means if the electronic means clearly demonstrates that the shareholder has authorized the placing of the shareholder's name or the name of the shareholder's attorney-in-fact on the proxy;

(42) "state" means any of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States;

(43) "subscriber" means one who subscribes for a share in a corporation before or after incorporation;

(44) "subsidiary" of a specified corporation means a corporation in which the specified corporation owns more than 50 percent of the voting power directly or indirectly through one or more other subsidiaries of the specified corporation;

(45) "surviving corporation" means a corporation into which one or more other corporations are merged;

(46) "vacancy" when used with respect to the board means any authorized position of director that is not then filled by a duly elected director, whether caused by death, resignation, removal, change in the authorized number of directors, or otherwise;

(47) "verified" means that a document has been certified to be true as provided in AS 09.63.040;

(48) "vote" includes authorization by written consent subject to the provisions of AS 10.06.423 and 10.06.475;

(49) "voting power" means the power to vote for the election of directors at the time a determination of voting power is made and does not include the right to vote upon the happening of a condition or event that has not yet occurred; when different classes of shares are entitled to vote as separate classes for different members of the board, the determination of percentage of voting power shall be made on the basis of the percentage of the total number of authorized directors that the shares in question have the power to elect in an election at which all shares then entitled to vote for the election of any directors are voted;

(50) "writing" includes any form of recorded message capable of comprehension by ordinary visual means;

(51) "remote communication" means communication by means of electronic communication, conference telephone, videoconference, the Internet, electronic transmission, or other means by which persons not physically present in the same location may communicate with and hear each other on a substantially simultaneous basis.

**Sec. 10.06.995. Short title.** This chapter may be cited as the Alaska Corporations Code.

## **CHAPTER 10. BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATION ACT**

### **Section**

- 10. Incorporation**
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- 160. First meeting of corporation
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**Sec. 10.10.010. Incorporation.** Three or more persons, who are residents of this state, who desire to create an industrial development corporation under this chapter for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges provided in this chapter, may be incorporated by filing articles of incorporation in the office of the commissioner as provided in this chapter.

**Sec. 10.10.020. Assistance of commissioner.** The commissioner shall assist the incorporators in forming the corporation and shall meet with and advise the corporation's board of directors.

**Sec. 10.10.030. Articles of incorporation and certificate of incorporation.** (a) The articles of incorporation must contain:

(1) the name of the corporation, which must include the words "Industrial Development Corporation of the State of Alaska";

(2) the location of the principal office of the corporation, but the corporation may have offices in other places in the state fixed by the board of directors;

(3) the purposes for which the corporation is organized, which must be to promote, stimulate, develop, and advance the business prosperity and economic welfare of this state and its citizens; to encourage and assist through loans, investments or other business transactions in the location of new business and industry in this state and to rehabilitate and assist existing business and industry; to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this state; to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational developments in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state;

(4) the names and post office addresses of the members of the first board of directors, who, unless otherwise provided by the articles of incorporation or the bylaws, shall hold office for the first year of existence of the corporation or until their successors are elected and have qualified;

(5) any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation; any provision creating, dividing, limiting, and regulating the powers of the corporation, the directors, stockholders or any class of the stockholders, including, but not limited to a list of the officers; and any provision governing the issuance of stock certificates to replace lost or destroyed certificates;

(6) the amount of authorized capital stock and the number of shares into which it is divided, the par value of each share and the amount of capital with which it will commence business and, if there is more than one class of stock, a description of the different classes; the names and post office addresses of the subscribers of stock and the number of shares subscribed by each; the aggregate of the subscription shall be the minimum amount of capital with which the corporation shall commence business and may not be less than \$1,000.

(b) The articles of incorporation shall be in writing subscribed by not fewer than three natural persons competent to contract and acknowledged by each of the subscribers before an officer authorized to take acknowledgments and filed in duplicate originals in the office of the commissioner for approval.

(c) The commissioner may not approve articles of incorporation for a corporation organized under this chapter until a total of at least seven financial institutions authorized to do business within this state have agreed in writing to become members of the corporation, and the agreement in writing is filed with the commissioner together with the articles of incorporation. When the articles of incorporation have been filed in the office of the commissioner and approved, the commissioner shall

(1) endorse on each duplicate original the word "filed," and the date of the filing;

(2) file one duplicate original in the commissioner's office;

(3) issue a certificate of incorporation and affix the other duplicate original to it;

(4) return to the incorporators or their representative the certificate of incorporation, together with the duplicate original of the articles of incorporation affixed.

(d) Upon the issuance of the certificate of incorporation, the corporate existence begins. The certificate of incorporation is conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated.

**Sec. 10.10.040. General powers.** In furtherance of its purposes and in addition to the powers now or hereafter conferred on business corporations by AS 10.06.010, the corporation shall, subject to the restrictions and limitations contained in this chapter have the following powers:

(1) to elect, appoint, and employ officers, agents, and employees; to make contracts and incur liabilities for a purpose of the corporation, except that the corporation may not incur a secondary liability by way of guaranty or endorsement of the obligations of a person, firm, corporation, joint-stock company, association or trust, or in another manner;

(2) to borrow money from its members and the Small Business Administration and any other federal agency for a purpose of the corporation; to issue for those purposes its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured, and to secure them by mortgage, pledge, deed of trust or other lien on its property, franchises, rights, and privileges of every kind and nature, or a part of them or interest in them, without securing stockholder or member approval;

(3) to make loans to a person, firm, corporation, joint-stock company, association or trust, and to establish and regulate the terms and conditions with respect to the loans and the charges for interest and service connected with them, except that the corporation may not approve an application for a loan unless and until the person applying for the loan shows that the applicant has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution;

(4) to purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with the rights and privileges that are incidental and appurtenant to the property and the use of it, including real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations;

(5) to acquire the good will, business, rights, real and personal property and other assets, or a part of them, or interest in them, of any persons, firms, corporations, joint-stock companies, associations or trusts, and to assume, undertake, or pay the obligations, debts, and liabilities of the person, firm, corporation, joint-stock company, association or trust; to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of the real estate to others for the construction of industrial plants or other business establishments; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments;

(6) to acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in, or indebtedness of any person, firm, corporation, joint-stock company, association or trust, and while the owner or holder of them to exercise all the rights, powers, and privileges of ownership, including the right to vote on them;

(7) to mortgage, pledge, or otherwise encumber any property, right or thing of value, acquired under the powers contained in (4), (5), and (6) of this section as security for the payment of a part of the purchase price of them;

(8) to cooperate with and avail itself of the facilities of the United States Department of Commerce, the state Department of Commerce, Community, and Economic Development, and any other state or federal governmental agencies; and to cooperate with and assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of the communities or of the state or of a part of the state;

(9) to do whatever is necessary or convenient to carry out the powers expressly granted in this chapter.

**Sec. 10.10.050. Authorization of members.** (a) Notwithstanding any rule at common law or provision of a general or special law or provision in their respective charters, agreements of association, articles of organization, or trust indentures:

(1) a natural person, domestic corporation, foreign corporation authorized to transact business in the state, insurance company, or a financial institution which becomes a member of the corporation, may acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock of the corporation or bonds, securities or other evidence of indebtedness created by the corporation; and while the owner of shares of capital stock of the corporation may exercise all the rights, powers and privileges of ownership, all without the approval of any regulatory authority of the state except as otherwise provided in this chapter; the amount of capital stock of the corporation which may be acquired by a member may not exceed 10 percent of the loan limit of the member;

(2) a financial institution may become a member of the corporation and make loans to the corporation as provided in this chapter.

(b) The amount of capital stock of the corporation which a member may acquire under the authority granted in this section is in addition to the amount of capital stock in corporations which the member may otherwise be authorized to acquire.

**Sec. 10.10.060. Admission to membership.** A financial institution may request membership in the corporation by making application to the board of directors on the form and in the manner the board of directors require, and membership becomes effective upon acceptance of the application by the board.

**Sec. 10.10.070. Loans by members.** (a) Each member of the corporation shall make loans to the corporation when called upon by it to do so on the terms and other conditions approved from time to time by the board of directors, subject to the following conditions:

(1) all loans limits shall be established at the thousand dollar amount nearest to the amount computed under this subsection;

(2) a loan to the corporation may not be made if immediately thereafter the total amount of the obligations of the corporation would exceed 10 times the amount then paid in on the outstanding capital stock of the corporation;

(3) the total amount outstanding on the loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by the member, may not exceed

(A) 20 percent of the total amount then outstanding on loans to the corporation by all members, including in the total amount outstanding amounts validly called for loan but not yet loaned;

(B) the following limit, to be determined as of the time the member becomes a member on the basis of the audited balance sheet of the member at the close of its fiscal year immediately preceding its application for membership, or in the case of an insurance company, its last annual statement to the state insurance commissioner: two and one-half percent of the capital and surplus of a commercial bank or trust company; one-half of one percent of the total outstanding loans made by a savings and loan association or building and loan association; two and one-half percent of the capital and unassigned surplus of a stock insurance company, except a fire insurance company; two and one-half percent of the unassigned surplus of a mutual insurance company, except a fire insurance company; one-tenth of one percent of the assets of a fire insurance company; and such limits as may be approved by the board of directors of the corporation for other financial institutions;

(4) subject to (3)(A) of this subsection, each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members; the adjusted loan limit of a member shall be the amount of the member's loan limit, reduced by the balance of outstanding loans made by the member to the corporation and the investment in capital stock of the corporation held by the member at the time of the call;

(5) all loans to the corporation by members shall be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable at all times, and which shall bear interest at a rate of not less than one-quarter of one percent in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the date of issuance thereof on unsecured commercial loans; the prime rate of interest is defined in this chapter as the rate of interest normally paid by banks or lending institutions.

(b) A member may not be obligated to make loans to the corporation pursuant to calls made after notice of the intended withdrawal of the member.

**Sec. 10.10.080. Duration of membership.** Membership in the corporation is for the duration of the corporation, but upon written notice given to the corporation five years in advance, a member may withdraw from membership in the corporation at the expiration date of the notice.

**Sec. 10.10.090. Powers of stockholders and members.** The stockholders and the members of the corporation have the following powers of the corporation:

(1) to determine the number of and elect directors as provided in AS 10.10.120;

(2) to make, amend, and repeal bylaws;

(3) to amend this charter as provided in AS 10.10.110;

(4) to dissolve the corporation as provided in AS 10.10.180;

(5) to do all things necessary or desirable to secure aid, assistance loans and other financing from any financial institutions, and from any agency established under 15 U.S.C. 661 - 697 (Small Business Investment Act of 1958), or other similar federal laws now or hereafter enacted;

(6) to exercise other of the powers of the corporation consistent with this chapter which may be conferred on the stockholders and the members by the bylaws.

**Sec. 10.10.100. Voting by members and stockholders.** (a) On all matters requiring action by the stockholders and the members of the corporation, the stockholders and members shall vote separately by classes, and except as otherwise provided in this chapter, these matters require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting are entitled and the affirmative vote of a majority of the votes to which the members present or represented at the meeting are entitled.

(b) Each stockholder shall have one vote, in person, by remote communication, or by proxy, for each share of capital stock held by that stockholder, and each member shall have one vote, in person, by remote communication, or by proxy, except that a member having a loan limit of more than \$1,000 shall have one additional vote, in person, by remote communication, or by proxy, for each additional \$1,000 that the member is authorized to have outstanding on loans to the corporation at any one time as determined under AS 10.10.070(a)(3)(B).

(c) A proxy may be executed in writing by a stockholder or by the authorized attorney-in-fact of the stockholder, or executed by electronic transmission by the stockholder or by the authorized attorney-in-fact of the stockholder. A proxy executed by electronic transmission must

(1) be directed to the person who will be the holder of the proxy or to a proxy solicitation person, including a proxy support service organization or similar agent that is authorized by the person who will be the holder of the proxy to receive the transmission; and

(2) include information that demonstrates that the stockholder authorized the transmission.

(d) In this section, "electronic transmission" and "remote communication" have the meanings given in AS 10.06.990.

**Sec. 10.10.110. Amendment of articles.** (a) The articles of incorporation may be amended by the vote of the stockholders and the members of the corporation, voting separately by classes. Amendments must be approved by the affirmative vote of two-thirds of the votes to which the stockholders are entitled and two-thirds of the votes to which the members are entitled. An amendment of the articles of incorporation may not be made which is inconsistent with the general purposes expressed in this chapter or which authorizes an additional class of capital stock to be issued, or which eliminates or curtails the right of the commissioner of administration to examine the corporation or the obligation of the corporation to make reports as provided in AS 10.10.150. An amendment of the articles of incorporation which increases the obligation of a member to make loans to the corporation, or makes a change in the principal amount, interest rate, maturity date, or in the security or credit position of an outstanding loan of a member to the corporation, or affects a member's right to withdraw from membership as provided in this chapter, or affects a member's voting rights as provided in this chapter, may not be made without the consent of each member affected by the amendment.

(b) Within 30 days after a meeting at which an amendment of the articles of incorporation has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting out the amendment and adoption of the amendment, shall be submitted in duplicate originals to the commissioner who shall examine them, and upon finding that they conform to the requirements of this chapter, shall

(1) endorse on each duplicate original the word "filed," and the date of the filing;

(2) file one duplicate original in the commissioner's office;

(3) issue a certificate of amendment and affix the other duplicate original to it;

(4) return to the corporation or its representative the certificate of amendment, together with the duplicate articles of amendment affixed.

(c) Upon the issuance of a certificate of amendment by the commissioner, the amendment becomes effective.

**Sec. 10.10.120. Directors and officers; annual and special meetings.** (a) The business and affairs of the corporation shall be conducted by a board of directors, a president, a vice president, a secretary, a treasurer, and other officers and agents the corporation by its bylaws may authorize. The board of directors shall consist of a number not less than seven nor more than 21, determined in the first instance by the incorporators and thereafter annually by the members and the stockholders of the corporation. The board of directors may exercise all the powers of the corporation except those that are conferred by law or by the bylaws of the corporation upon the stockholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies except on the board of directors. The board of directors shall be elected in the first instance by the incorporators and thereafter at the annual meeting, which shall be held during the month of January or, if no annual meeting can be held in the year of incorporation, then within 90 days after the approval of the articles of incorporation at a special meeting. At each annual meeting, or at each special meeting held as provided in this section, the members of the corporation shall elect two-thirds of the board of directors, and the stockholders shall elect the remaining directors. The directors hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after the election and until their successors are elected and qualified unless sooner removed in accordance with the bylaws. A vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and a vacancy in the office of a director elected by the stockholders shall be filled by the directors elected by the stockholders.

(b) Directors and officers are not responsible for losses unless they are occasioned by the wilful misconduct of the directors and officers.

**Sec. 10.10.130. Earned surplus.** Each year the corporation shall set apart as earned surplus not less than 10 percent of its net earnings for the preceding fiscal year until the surplus equals one half of the amount paid in on the capital stock then outstanding. Whenever the amount of the surplus is less than the required amount, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for reserves the directors consider desirable, and the determination of the directors made in good faith shall be conclusive on all persons.

**Sec. 10.10.140. Designation of depository; prohibition against receiving deposits.** The corporation may not deposit any of its funds in a banking institution unless the institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of a director who is an officer or director of the depository. The corporation may not receive money on deposit.

**Sec. 10.10.150. Examinations, reports of condition, and required information.** The corporation shall be examined at least once annually by the commissioner of administration and shall make reports of its condition not less than annually to the commissioner of administration and more frequently upon call of the commissioner of administration, who in turn shall make copies of the reports available to the commissioner of commerce, community, and economic development and the governor. The corporation shall also furnish other information which may from time to time be required by the commissioner of administration. The corporation shall pay the actual cost of the examinations.

**Sec. 10.10.160. First meeting of corporation.** (a) The first meeting of the corporation shall be called by a notice signed by three or more of the incorporators, stating the time, place, and purpose of the meeting. A copy of the notice shall be mailed or delivered to each incorporator at least five days before the day appointed for the meeting. The first meeting may be held without notice upon agreement in writing signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of the notice or of the unanimous agreement of the incorporators.

(b) At the first meeting, the incorporators shall choose, by ballot, a temporary clerk, adopt bylaws, elect directors by ballot, and act upon other matters within the powers of the corporation. The temporary clerk shall be sworn and shall make and attest a record of the proceedings. A majority of the incorporators, but not fewer than three, shall be a quorum for the transaction of business.

**Sec. 10.10.170. Duration of corporation.** The duration of the corporation shall be 50 years, subject, however, to the right of the stockholders and the members to dissolve the corporation before the expiration of that period as provided in AS 10.10.180.

**Sec. 10.10.180. Dissolution of corporation.** The corporation may upon the affirmative vote of two-thirds of the votes to which the stockholders are entitled and two-thirds of the votes to which the members are entitled dissolve the corporation. Upon dissolution of the corporation, none of the corporation's assets shall be distributed to the stockholders until all sums due the members of the corporation as creditors of the corporation have been paid in full.

**Sec. 10.10.185. Cancellation of corporate filings.** The provisions in AS 10.06 (Alaska Corporations Code) relating to the cancellation of certain corporate filings apply to corporations created under this chapter.

**Sec. 10.10.190. Prohibition of pledge of credit of state.** The credit of the state may not be pledged to a corporation organized under the provisions of this chapter.

**Sec. 10.10.200. Corporation a "state development company".** A corporation organized under the provisions of this chapter shall be a state development company, as defined in 15 U.S.C. 661 - 696 (Small Business Investment Act of 1958), or any other similar federal legislation, and shall be authorized to operate on a statewide basis.

**Sec. 10.10.210. Definitions.** In this chapter, unless the context otherwise requires,

- (1) "board of directors" means the board of directors of the corporation created under this chapter;
- (2) "commissioner" means the commissioner of commerce, community, and economic development;
- (3) "corporation" means the Alaska Business and Industrial Development Corporation created under this chapter;
- (4) "financial institution" means a banking corporation or trust company, savings and loan association, insurance company or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds;

(5) "loan limit" means for any member, the maximum amount permitted to be outstanding at one time on loans made by the member to the corporation, as determined under this chapter;

(6) "member" means a financial institution authorized to do business within this state which undertakes to lend money to a corporation created under this chapter, upon its call, and in accordance with this chapter.

**Sec. 10.10.220. Short title.** This chapter may be cited as the Business and Industrial Development Corporation Act.

## **CHAPTER 15. ALASKA COOPERATIVE CORPORATION ACT**

### **Article**

- 1. Substantive Provisions (§§ 10.15.005 – 10.15.331)**
- 2. Formation of Cooperatives (§§ 10.15.335 – 10.15.360)**
- 3. Amendment and Restatement of Articles (§§ 10.15.365 - 10.15.395)**
- 4. Merger, Consolidation, and Conversion of Corporation Into Cooperative (§§ 10.15.400 – 10.15.455)**
- 5. Dissolution (§§ 10.15.460 – 10.15.520)**
- 6. Foreign Cooperatives (§ 10.15.525)**
- 7. Fees, Charges, and Penalties (§§ 10.15.530 – 10.15.560)**
- 8. Miscellaneous Provisions (§§ 10.15.565 – 10.15.578)**
- 9. General Provisions (§§ 10.15.580 – 10.15.600)**

### **ARTICLE 1. SUBSTANTIVE PROVISIONS**

#### **Section**

- 05. Purposes for which cooperatives may be organized**
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- 15. Bylaws**
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**Sec. 10.15.005. Purposes for which cooperatives may be organized.** A cooperative may be organized under this chapter for any lawful purpose, except for the purpose of banking or insurance or the furnishing of electric or telephone or related telecommunications service.

**Sec. 10.15.010. General powers.** Each cooperative may

- (1) have perpetual succession unless a limited period of duration is stated in its articles;
- (2) sue and be sued, complain and defend, in its corporate name;
- (3) adopt a corporate seal and alter it, and use it by having it, or a facsimile of it impressed, affixed or reproduced;
- (4) buy, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in, real or personal property, wherever situated;
- (5) sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of its property and assets;
- (6) buy, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in, shares or other interests in, or obligations of, other domestic or foreign cooperatives and corporations, partnerships or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, or its governmental district or municipality or instrumentality;
- (7) make contracts and incur liabilities, borrow money at the rates of interest the cooperative determines, issue notes, bonds, certificates of indebtedness and other obligations, issue certificates representing equity interests in its assets, and secure its obligations by mortgage or pledge of its property, franchise and income;
- (8) lend money for its corporation purposes, invest and reinvest its funds and take and hold real and personal property as security for the payment of funds loaned or invested;
- (9) conduct business and affairs and have offices and exercise its powers in a state, territory, district or possession of the United States, or in a foreign country;

- (10) elect or appoint officers and agents, and define their duties and fix their compensation;
- (11) make and alter bylaws, consistent with its articles and the laws of the state, for the administration and regulation of its affairs;
- (12) donate for the public welfare or for charitable, scientific or educational purposes;
- (13) indemnify a director, officer or agent or former director, officer or agent, or a person who may have served at its request as a director or officer of another domestic or foreign cooperative of which it is a member, against expenses necessarily incurred in defense of a proceeding in which that person is a party because that person served as a director, officer or agent, but this paragraph does not apply to proceedings in which the director, officer or agent is adjudged liable for negligence or misconduct in the performance of duty, and indemnification under this paragraph is not exclusive of other rights to which the director, officer or agent may have been entitled;
- (14) cease its activities and surrender its franchise;
- (15) have and exercise all powers necessary or convenient to carry out the purposes for which the cooperative is organized.

**Sec. 10.15.015. Bylaws.** The board of directors shall adopt the initial bylaws of a cooperative. The members of the cooperative may alter, amend or repeal the bylaws or adopt new bylaws. Bylaws may contain provisions for the regulation and management of the affairs of the cooperative not inconsistent with law or the articles.

**Sec. 10.15.020. Membership.** (a) Membership in a cooperative is conditioned on ownership of a share of membership stock or payment of a membership fee as set forth in the articles. However, the bylaws of a cooperative may authorize membership conditioned upon payment of part of the membership fee or payment for part of the membership stock subscribed for and compliance with an agreement to pay the balance.

(b) The bylaws of the cooperative shall set forth the qualifications for membership and method of acceptance of members; however, the bylaws may not deny membership privileges or votes to any owner or holder of a producer's certificate of equity if they own or hold payable or past due certificates of \$2,500 or more.

(c) Bylaws may provide for termination of membership and the conditions and terms of termination.

**Sec. 10.15.025. Registered office and registered agent.** Each cooperative shall continuously maintain in this state a registered

(1) office which may, but need not be, the same as its place of business;

(2) agent, who may be either an individual resident in the state whose business office is identical with the registered office, or a domestic corporation having a business office identical with the registered office, or a foreign corporation authorized to transact business in the state and having a business office identical with the registered office.

**Sec. 10.15.030. Change of registered office or agent.** A cooperative may change its registered office or registered agent under the procedure set out in AS 10.06.165, and a person who has been designated by a cooperative as its registered agent may resign under the procedure set out in AS 10.06.170.

**Sec. 10.15.035. Service on agent is service on cooperative.** A registered agent appointed by a cooperative is an agent of the cooperative upon whom process, notice or demand required or permitted by law to be served upon the cooperative may be served.

**Sec. 10.15.040. Defense of ultra vires.** An act or a transfer of property to or by a cooperative is not invalid because it is in excess of the cooperative's power to do the act or make or receive the transfer, except that the lack of power may be asserted in a proceeding by

(1) a member, shareholder or director against the cooperative to enjoin an act or transfer of property to or by the cooperative; if the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made under a contract to which the cooperative is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it considers it equitable, set aside and enjoin the performance of the contract, and in so doing may allow to the cooperative or to the other parties to the contract compensation for the loss or damage sustained by either of them resulting from the action of the court in setting aside and enjoining the performance of the contract; but the court may not award anticipated profits to be derived from the performance of the contract as a loss or damage sustained;

(2) a cooperative, its legal representative, or through its members or shareholders in a representative suit, against the officers or directors of former officers and directors of the cooperative;

(3) the attorney general against the cooperative in an action to dissolve the cooperative or to enjoin it from the transaction of unauthorized business.

**Sec. 10.15.045. Capital stock.** A cooperative, including a cooperative that requires a membership fee rather than the holding of membership stock as a prerequisite of membership, may issue the number of shares of capital stock stated in its articles. The shares may be divided into more than one class with the designations, preferences, limitations and relative rights stated in the articles, except that capital stock has no voting power except as specifically authorized in this chapter.

**Sec. 10.15.050. Membership stock.** The articles may require that members own one or more shares of membership stock, and may provide limitations on the issuance and transferability of the stock.

**Sec. 10.15.055. Transfer of stock.** Unless restricted by the articles, stock other than membership stock may be issued or transferred without limitation.

**Sec. 10.15.060. Payment required for issuance.** A stock certificate may not be issued except upon payment of the par value of the shares it represents if the shares have par value, or if the shares are without par value, upon payment of the consideration for the shares expressed in dollars as fixed for the shares by the board. Payment for shares may be in cash or other tangible or intangible property. If payment is made in property other than cash, the value of the property shall be determined by the board. The determination, if made in good faith, is conclusive.

**Sec. 10.15.065. No preemptive right to new issues.** Shareholders have no preemptive right to purchase additional shares.

**Sec. 10.15.070. Certificates representing shares.** Each certificate of stock of a cooperative must bear the manual or facsimile signature of a principal officer and must include the following information:

(1) the name of the cooperative, number and class of the shares represented by the certificate, the par value of each share or a statement that the shares are without par value, and if the shares are membership stock, that designation;

(2) any restrictions on the issuance or transfer of the shares;

(3) if more than one class of stock is authorized or if stock is authorized in a cooperative that requires a membership fee of its members, designation of the several classes of stock and the respective preferences, limitations, and relative rights of the classes; instead of a full statement, the information required by this paragraph may be given in summary form.

**Sec. 10.15.075. Manner of voting by shareholders.** AS 10.06.420 relating to voting of shares in business corporations applies to shareholders of cooperatives and shares of the capital stock of cooperatives other than membership stock.

**Sec. 10.15.080. Determining who are shareholders for purposes of notice, voting, and dividends.** For the purpose of determining shareholders entitled to notice of or to vote at meetings, or entitled to receive payment of a dividend, the bylaws may fix in advance a date as the record date for the determination of shareholders. The date shall be not more than 50 days and not less than 10 days prior to the date on which the particular action requiring the determination of shareholders is to be taken. If no record date is fixed by the bylaws, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring the dividend is adopted, as the case may be, is the record date for the determination of shareholders. When a determination of shareholders entitled to vote at a meeting is made as provided in this section, the determination applies to any adjournment of that meeting.

**Sec. 10.15.085. Subscription for shares.** A subscription for shares of a cooperative is irrevocable for six months unless otherwise provided by the subscription agreement, or unless all subscribers consent to the revocation.

**Sec. 10.15.090. Limitation of liability of members.** Except for a debt lawfully contracted between a member and the cooperative, a member is not liable for the debts of the cooperative in an amount exceeding the sum remaining unpaid on the member's subscription for shares of the cooperative, and the sum remaining unpaid on the member's membership fee if a fee is required by the cooperative.

**Sec. 10.15.095. Dividends on capital stock.** A cooperative organized with capital stock may pay the dividend upon capital stock authorized by its articles if its capital is not impaired and would not be impaired by the payment.

**Sec. 10.15.100. Recall, acquisition, exchange, redemption, and reissuance of stock or other evidence of equity.** Unless the articles provide otherwise, a cooperative may recall membership stock upon termination of membership, and acquire, exchange, redeem, and reissue its own shares or other evidences of equity. The consideration paid for shares of membership stock recalled by the cooperative shall be the par value of the shares

plus accrued and unpaid dividends, if any. However, if the shares have no par value the consideration paid shall be the consideration in dollars for which the shares were issued plus accrued and unpaid dividends. The cooperative may set off obligations to it of the holder of membership stock or other evidence of equity.

**Sec. 10.15.105. Limitations on acquisition, recall, exchange, or redemption.** No acquisition, recall, or redemption of stock or other evidence of equity may be made if the result would be to bring the value of the remaining assets of the cooperative below the aggregate of its indebtedness. The articles may provide limitations on the right of a cooperative to acquire, recall, exchange, or redeem its shares or other evidences of equity.

**Sec. 10.15.110. Status of acquired, recalled, exchanged, or redeemed shares.** When shares are acquired, recalled, exchanged or redeemed by the cooperative, they are restored to the status of authorized but unissued shares.

**Sec. 10.15.115. Missing certificates or ownership records.** (a) When a certificate for a security issued by a cooperative is missing, the cooperative shall issue a duplicate certificate upon the request of the owner and upon the furnishing of the indemnity required by the cooperative.

(b) When records showing ownership of securities are missing or if records upon which the apportionment of securities is based are missing, and in either case if the information which is missing is necessary to a proposed redemption of the securities, the cooperative may give notice and redeem the securities as follows:

- (1) the cooperative shall set aside an amount equal to the value of the securities to be redeemed;
- (2) the cooperative shall give notice of the redemption to all owners of securities of whom the cooperative has knowledge;
- (3) if the ownership of any securities is unknown to the cooperative, it shall publish notice of the redemption at least once a month for four months in a newspaper of general circulation in the judicial district in which the registered office of the cooperative is located;

(4) after publication, unclaimed outstanding securities represented by the missing records may be terminated in accordance with the provisions of this chapter dealing with unclaimed distributions, redemptions or proceeds.

**Sec. 10.15.120. Meetings of members.** (a) Meetings of members may be held either inside or outside the state as provided in the bylaws. In the absence of a bylaw provision, meetings shall be held at the principal place of business of the cooperative.

(b) An annual meeting of the members shall be held at the time or within the time provided in the bylaws. If the bylaws do not fix a time for the meeting, the annual meeting shall be held in each calendar year at the time the board determines. Failure to hold the annual meeting at the designated time does not work a forfeiture or dissolution of the cooperative.

(c) Special member meetings may be called by the president or the board. The secretary shall call a special meeting upon the filing of a petition stating the business to be brought before the meeting signed by not less than 10 percent of the members of the cooperative.

(d) Written notice stating the place, day and hour, and in case of a special member meeting the purpose for which the meeting is called, shall be given to each member and each shareholder, if shareholders are entitled to vote at the meeting, either personally or by mail, not less than seven or more than 30 days before the meeting by direction of the person calling the meeting. If that notice is mailed, it is considered given when deposited in the United States mail addressed to the member or shareholder at the address of the member or shareholder as it appears on the records of the cooperative with postage prepaid. At a meeting at which the members are to be represented by delegates, notice to the members may be given by notifying the delegates and their alternates, if any.

**Sec. 10.15.125. Districts and district meetings.** A cooperative may provide in its bylaws (1) for the formation of districts, and the holding of member meetings by districts and the holding of elections of directors at district meetings; and (2) that delegates may be elected at district meetings to represent their districts in annual and special meetings of the members. Notice of district meetings shall be given in the same manner as prescribed in AS 10.15.120 for member meetings.

**Sec. 10.15.130. Voting by members.** (a) Each member has one vote except that bylaws may authorize voting according to actual, estimated or potential patronage, or a combination of these plans of voting. Shares of stock may not be given voting power except in the specific instances authorized by this chapter.

(b) Members may not vote by proxy. However, a member that is a corporation, association or partnership may designate a representative to cast its vote. In the absence of written notice that a person has been designated to represent a member which is other than a natural person, the member may be represented by any of its principal officers.

(c) If the bylaws of a cooperative provide for the formation of districts and the election of delegates at district meetings to represent their districts in member meetings, this representation is not considered voting by proxy. The delegates shall cast the votes to which members represented by them are entitled on those matters not covered by mail ballots submitted to all members.

(d) If the bylaws so provide, the board may have submitted by mail ballot any question to be voted on at a member meeting, including the election of directors. In this event the secretary shall mail to each member, along with the notice of the meeting, the ballot on each question and a voting envelope. The ballot shall be cast in a sealed envelope authenticated by the member's signature. A vote cast by mail shall be counted as if the member were present and voting in person.

(e) The bylaws may set forth provisions, not inconsistent with this chapter, relating to the methods and procedures for voting.

**Sec. 10.15.135. Quorum of members.** Ten percent of voting members, in person or by proxy, if district delegates, constitute a quorum for an annual or special meeting unless the bylaws provide for a greater number.

**Sec. 10.15.140. Qualifications and membership of board of directors.** (a) The board of directors shall manage the business and affairs of a cooperative. Each director shall be a member or a representative of a member who is not a natural person. Unless the bylaws otherwise provide, directors need not be residents of this state. The bylaws may prescribe other qualifications for directors and may provide that directors be from specified state districts.

(b) The board of directors shall consist of at least three members. The number of directors shall be fixed or determined by the bylaws, except that the number constituting the initial board shall be fixed by the articles.

**Sec. 10.15.145. Initial board of directors.** Directors constituting the initial board hold office until the first annual meeting of the members and until their successors are elected and take office.

**Sec. 10.15.150. Election and terms of directors.** At the first annual meeting and at subsequent meetings, directors shall be elected by the members in the manner and for the term of office provided in the bylaws, but not to exceed three years. Each director shall enter immediately upon the discharge of the director's duties and, subject to resignation or removal, shall hold office for the term for which elected and until a successor takes office.

**Sec. 10.15.155. Removal of directors.** A director may be removed upon a majority vote of all members voting in person at a member meeting. Before a vote for removal may be taken, written reasons for removal of the director shall be presented at a meeting of members and the director sought to be removed shall have an opportunity to answer the reasons at that meeting. The written statement of reasons for removal shall be filed with the minutes of the meeting. The bylaws may contain other provisions for the removal of a director consistent with the provisions of this section.

**Sec. 10.15.160. Filling unexpired term.** Unless the bylaws provide otherwise, a vacancy in the board may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board. The director elected to fill a vacancy serves for the unexpired term of the director's predecessor in office.

**Sec. 10.15.165. Meetings of board of directors.** (a) Regular or special meetings of the board may be held inside or outside the state.

(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 the notice prescribed in the bylaws. Attendance of a director at a meeting constitutes a waiver of notice of the meeting except where a director attends a meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

(c) Unless the bylaws provide otherwise, the purpose of a meeting of the board need not be specified in the notice of the meeting.

(d) Unless a greater number is required in the bylaws, a majority of the members of the board determined pursuant to the bylaws or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles constitutes a quorum for the transaction of business. Unless a greater number is required in the bylaws, an act of the majority of the directors present at a meeting at which a quorum is present is the act of the board.

**Sec. 10.15.170. Executive committee.** (a) If the bylaws provide, the board may elect an executive committee consisting of three or more directors which, to the extent provided in the bylaws of the cooperative, may exercise all the authority of the board in the management of the cooperative, except for

- (1) apportionment or distribution of net proceeds, savings or losses;
- (2) selection of officers;
- (3) filling of vacancies in the board or the executive committee.

- (b) The board may elect other directors as alternates for members of the executive committee.
- (c) Designation of an executive committee and the delegation to it of authority does not relieve the board or a member of the board of any responsibility imposed by law.

**Sec. 10.15.175. Officers.** (a) The principal officers of a cooperative are a president, one or more vice presidents as prescribed in the bylaws, a secretary and a treasurer. The officers shall be elected annually by the board at the time and in the manner the bylaws provide. The offices of secretary and treasurer may be combined in one person. Each principal officer except the secretary and the treasurer, and one of the vice presidents if the bylaws provide for more than one, shall be a director of the cooperative. The manager of a cooperative may hold the office of vice president if more than one vice president is provided for in the bylaws.

(b) Other officers may be chosen by the board.

(c) Officers have the authority and shall perform the duties the bylaws provide, or as the board determines, not inconsistent with the bylaws. Any officer may be removed by the board whenever in its judgment the best interests of the cooperative will be served by removal. Election or appointment of an officer does not of itself create contract rights.

**Sec. 10.15.180. Compensation and benefits to directors, officers, and employees.** Unless the bylaws provide otherwise,

(1) only the members of the cooperative may establish compensation or other benefits for a director, not available generally to officers and employees, for services as a director;

(2) a director may not hold, during a term as director, a position in the cooperative on regular salary;

(3) the board may provide, for prior or future services of an officer or employee, reasonable compensation, pension, or other benefits to the officer or employee and pension or other benefits to a member of the family of the officer or employee or the beneficiaries of the officer or employee; an officer or employee who is a director may not take part in a vote on compensation for services rendered or to be rendered to the cooperative by that officer or employee.

**Sec. 10.15.185. Taking action without meeting.** Action required by this chapter to be taken at a meeting of the members or directors of a cooperative, or any other action that may be taken at a meeting of the members, directors, or members of the executive committee, may be taken without a meeting if a consent in writing setting forth the action taken is signed by all of the members, directors, or executive committee members entitled to vote. This consent has the force and effect of a unanimous vote at a meeting.

**Sec. 10.15.190. Waiver of notice.** Whenever a notice is required to be given to a member or director of a cooperative under this chapter or under the articles or bylaws of a cooperative, a waiver of notice in writing signed by the person entitled to the notice, before or after the time stated in the notice, is equivalent to the giving of the notice.

**Sec. 10.15.195. Voting requirements of articles.** If the articles require the vote of a greater proportion of the members or shareholders than required by this chapter, the articles control.

**Sec. 10.15.200. Procedural requisites in action brought in right of cooperative by member or shareholder.**

(a) An action may not be instituted or maintained in the right of a cooperative by a member or shareholder unless that person

(1) alleges in the complaint that the person was a member or shareholder of record when a part of the transaction of which the person complains took place, or that membership or stock afterwards devolved on the person by operation of law from a person who was a member or shareholder at that time;

(2) alleges in the complaint with particularity efforts of the person to secure from the board the action desired, that the person has either informed the cooperative or board in writing of the ultimate facts of each cause of action against each director or that the person has delivered to the cooperative or board a copy of the complaint that the person proposes to file, and states the reasons for failure of the person to obtain action or the reasons for not making the effort;

(3) files a complaint in the action within 20 days after notification given to the cooperative or board as provided by (2) of this subsection.

(b) The action may not be dismissed or compromised without the approval of the court.

**Sec. 10.15.205. Allowance of costs to plaintiff; accounting for proceeds.** If anything is recovered or obtained as the result of an action under AS 10.15.200, whether by compromise and settlement or by judgment, the court may award the plaintiff the reasonable expenses of maintaining the action, including reasonable attorney fees, out of the

proceeds of the recovery, and may direct the plaintiff to account to the cooperative for the remainder of the proceeds.

**Sec. 10.15.210. Security for costs.** In an action brought in the right of a cooperative by fewer than three percent of the members or by holders of less than three percent of an outstanding class of stock, the defendants may require the plaintiff to give security for the reasonable expenses of defending the action, including attorney fees. The amount of the security may be increased or decreased in the discretion of the court upon showing that the security provided is or may be inadequate or is excessive.

**Sec. 10.15.215. Permitted purposes of cooperative contracts with members.** Contracts for any of the following purposes, whether contained in the bylaws or separately written, are valid when made between a cooperative and a member in which the member agrees to

(1) sell, market or deliver to or through the cooperative or facilities furnished by it all or a specified part of products produced by the member or under the control of the member;

(2) authorize the cooperative or facilities furnished by it to act for the member in any manner with respect to all or a specified part of products produced by the member or under the control of the member;

(3) buy or procure from or through the cooperative or facilities furnished by it all or a specified part of goods or services to be bought or produced by the member;

(4) authorize the cooperative or facilities furnished by it to act for the member in any manner in the procurement of goods or the procurement of performance of services.

**Sec. 10.15.220. Liquidated damages clause in cooperative contracts.** The contract referred to in AS 10.15.215 may fix and require liquidated damages to be paid by the member to the cooperative in the event of a breach of the contract by the member. Liquidated damages may be a percentage of the value or a specified amount per unit of the products, goods or services involved by the breach, or a specific sum.

**Sec. 10.15.225. Contracts between two or more cooperatives.** Two or more cooperatives may contract and act in association, corporate or otherwise, to perform collectively any of their powers or purposes authorized by this chapter.

**Sec. 10.15.230. Recording of cooperative contracts.** A cooperative may record a contract authorized by this chapter in the office of the recorder of the recording district in which the member resides or in which the products covered by the contract have been or are to be produced.

**Sec. 10.15.235. Recording of uniform cooperative contracts.** If the cooperative has substantially uniform contracts with more than one member residing or producing the products in a recording district, it may, instead of recording the original contracts, record

(1) a true copy of the uniform contract; and

(2) a sworn list of the names of members who have executed the contract and who reside or produce the products in the recording district, and the effective date of the contract as to each member.

**Sec. 10.15.240. Recording procedure.** The recorder shall number consecutively and record each contract, and shall record alphabetically in a book to be kept for that purpose the name of each party to the contract and enter opposite that name the record number of the contract and its effective date as to that party. The record book shall be available for public inspection.

**Sec. 10.15.245. Fees for recording contracts.** The fee for recording the contract is the same as for recording a chattel mortgage. The fee for recording the names of parties to each contract is two cents for each name.

**Sec. 10.15.250. Effect of recording contract; subsequent interests and liens.** Recording under AS 10.15.230 - 10.15.260 operates as a constructive notice to all persons of the existence and contents of the contract. Any right, title, interest, or lien created as to the products covered by the contract subsequent to the recording is subject to the cooperative's right, title, or interest under the contract. If the member creates a mortgage upon any products subsequent to the recording of the contract, and if the member and the mortgagee jointly notify the cooperative in writing of the existence and amount of the mortgage, all payments from the cooperative to the member which become due after the notice by reason of the cooperative's sale or other handling of the products shall be paid to the mortgagee until the amount of the mortgage has been paid, and the balance thereafter shall be paid to the member.

**Sec. 10.15.255. Termination of recorded contract.** When a contract recorded under AS 10.15.230 - 10.15.260 has been terminated in any manner, the cooperative shall upon demand, give a statement of termination to the

member party to the contract, who may record the statement in the office of the recorder where the contract was originally recorded. The recorder shall stamp "expired" after the name of the member in the alphabetical record. The fee for the recording and stamping shall be established by the department by regulation.

**Sec. 10.15.260. Recording of list of terminated contracts.** A cooperative may record in the office of the recorder where the contract was originally recorded a sworn list of the names of all persons whose contracts have been terminated in a manner other than by expiration of their term. The recorder shall stamp "expired" after the name of each of those persons in the alphabetical record. The fee for the recording and stamping shall be established by the department by regulation.

**Sec. 10.15.265. Relief against breach or threatened breach of contract and penalty for interference.** (a) In the event of a breach or threatened breach of a cooperative contract authorized by this chapter, the cooperative is entitled to an injunction to prevent the breach or a further breach, and to a decree of specific performance of the contract. Upon filing of a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the cooperative is entitled to a temporary restraining order.

(b) A person who, with knowledge that a contract exists, induces or attempts to induce a member to breach the contract with the cooperative, or who in any manner aids a breach of the contract, is liable to the cooperative for damages caused by the interference. The cooperative is also entitled to an injunction to prevent any interference or further interference with the contract.

**Sec. 10.15.270. Action for civil penalty for inducing breach of contract with cooperative or spreading false reports about cooperative.** In addition to the remedies provided in AS 10.15.265(b), a person who knowingly and maliciously induces or attempts to induce a member of a cooperative to breach a contract with the cooperative authorized by this chapter, or who knowingly or maliciously spreads a false report about the finances or management of a cooperative is liable, in a civil action, to the cooperative aggrieved, in the penal sum of \$500 for each offense.

**Sec. 10.15.275. Apportionment and distribution of net proceeds, savings, or net losses.** The net proceeds or savings of a cooperative shall be apportioned, distributed and paid periodically to the persons entitled to receive them at the times and in the reasonable manner as the bylaws provide. However, net proceeds or savings on patronage of the cooperative by its members shall be apportioned and distributed among these members in accordance with the ratio which each member's patronage during the period involved bears to total patronage by all members during that period. The bylaws may contain reasonable provisions for the apportionment and charging of net losses. For the purposes of this section work performed as a member of a workers' cooperative is considered as patronage of that cooperative.

**Sec. 10.15.280. Manner of payment.** The apportionment, distribution, and payment of net proceeds or savings required by AS 10.15.275 may be in cash, credits, capital stock, certificates of interest, revolving fund certificates, letters of advice or other securities or certificates issued by the cooperative or by an affiliated domestic or foreign cooperative association whether or not incorporated under this chapter.

**Sec. 10.15.285. Manner of apportionment and distribution.** (a) Apportionment and distribution of net proceeds or savings or net losses may be separately determined for and be based upon patronage of single or multiple pools, particular departments of the cooperative, or as to particular commodities, supplies or services, or upon classification of patronage according to the type of patronage.

(b) A cooperative may provide in its bylaws the minimum amount of a single patronage transaction to be taken into account for the purpose of participation in allocation and distribution of net proceeds or savings or net losses under AS 10.15.275 - 10.15.290.

**Sec. 10.15.290. Determination of net proceeds, savings, or losses.** For the purposes of AS 10.15.275 - 10.15.290 net proceeds or savings or net losses shall be computed in accordance with generally accepted accounting principles applicable to cooperative corporations, and after deducting from gross proceeds or savings dividends paid upon capital stock.

**Sec. 10.15.295. Unclaimed distribution, redemptions, or payments.** A distribution of net margins by a cooperative or a redemption of or payment based upon a security, which remains unclaimed six years after the date authorized for payment, redemption, or retirement may be forfeited by the board. The amount forfeited may revert to the cooperative, if, at least six months prior to the declared date of forfeiture, notice that the payment is available has been mailed to the last known address of the person shown by the cooperative's records to be entitled to it or, if the address is unknown, is published as provided by law for the publication of summons.

**Sec. 10.15.300. Sale or other disposition of entire assets in regular course of business.** The sale, lease, exchange or other disposition of all, or substantially all, the property and assets of a cooperative, when made in the usual and regular course of the business of the cooperative, may be made on the terms and conditions and for the consideration authorized by the board. The consideration may consist in whole or in part of money or real or personal property, including shares of another cooperative, corporation or association, domestic or foreign, as authorized by its board. Authorization or consent of members or shareholders is not required.

**Sec. 10.15.305. Sale or other disposition of entire assets not in regular course of business.** A sale, lease, exchange, or other disposition of all, or substantially all the property and assets, with or without the good will, of a cooperative, if not made in the usual and regular course of its business, may be made upon the terms and for the consideration, which may consist in whole or in part of money or real or personal property, including shares of another cooperative, corporation, or association, as may be authorized in the following manner:

(1) the board shall adopt a resolution recommending the sale, lease, exchange, or other disposition and directing the submission of the resolution to a vote at a meeting of members, which may be either an annual or a special meeting, or if there are shareholders the submission shall be to a joint meeting of members and shareholders; the vote may be submitted at an annual or a special meeting;

(2) written notice shall be given to each member and to each shareholder within the time and in the manner provided for the giving of notice of meetings of members, and shall state that the purpose of the meeting is to consider the proposed sale, lease, exchange, or other disposition;

(3) at the meeting, the members, by affirmative vote of a majority of the member votes cast, and the shareholders, by affirmative vote of a majority of the shareholder votes entitled to be voted, may approve the sale, lease, exchange, or other disposition, and may fix or may authorize the board to fix the terms and conditions of the transaction and the consideration to be received by the cooperative.

**Sec. 10.15.310. Abandonment of sale or other disposition.** After authorization by votes of members and shareholders, the board may abandon the sale, lease, exchange or other disposition of all or substantially all assets subject to the rights of third parties under a contract relating thereto, without further action or approval by members or shareholders.

**Sec. 10.15.315. Books and records; inspection.** (a) A cooperative shall keep correct and complete books and records of account, and shall keep minutes of the proceedings of its members, board and executive committee. It shall keep at its principal office records of the names and addresses of all members and shareholders. At any reasonable time, a member or shareholder, or an agent or attorney for the member or shareholder, upon written notice stating the purpose, may examine for any proper purpose books or records pertinent to the purpose specified in the notice and may make extracts from the books or records.

(b) In an action or proceeding to enforce the right of a member or shareholder provided in (a) of this section, if the member or shareholder prevails in the action or proceeding, there shall be allowed to the member or shareholder, as a part of costs, a reasonable amount to be fixed by the court as attorney fees for the prosecution of the action or proceeding.

**Sec. 10.15.320. Biennial report.** (a) Each cooperative shall file with the department before July 2 of the reporting year a biennial report signed by a principal officer or the general manager setting out

(1) its name and the address of its principal place of business in the state;

(2) the name of its registered agent and address of its registered office;

(3) the names and addresses of its principal officers and its general manager, if any;

(4) a statement of the aggregate number of shares which the cooperative may issue, itemized by classes, par value of shares, shares without par value;

(5) a statement of the aggregate number of shares subscribed, but not paid up, itemized by classes, par value of shares, shares without par value;

(6) a statement of the aggregate number of paid-up shares, itemized by classes, par value of shares, shares without par value;

(7) for cooperatives established without capital stock the biennial report shall contain a statement as to the amount of the membership fee and a statement as to the number of memberships which are issued;

(8) a brief statement of the character of the business in which the cooperative is engaged in this state.

(b) A domestic cooperative filing its articles of incorporation and a foreign cooperative receiving a certificate of authority during an even-numbered year must file the biennial report before July 2 of each even-numbered year. A cooperative filing its articles of incorporation or receiving its certificate of authority during an odd-numbered year must file the biennial report before July 2 of each odd-numbered year.

**Sec. 10.15.325. Form of biennial report; delinquent reports.** The biennial report shall be made on forms furnished by the department. The information contained in the biennial report shall be given as of June 30 of the reporting year. The biennial report is delinquent if not filed before August 1 of each odd or even year as provided in this section. A corporation that is delinquent is subject to involuntary dissolution under AS 10.15.505.

**Sec. 10.15.330. Acceptance of biennial reports by department.** If the department finds that the biennial report conforms to the requirements of this chapter, it shall accept it. If the biennial report does not conform to the requirements of this chapter, the department shall return it to the cooperative for necessary corrections, in which event the penalties prescribed in this chapter for failure to file the statement within the time provided in AS 10.15.325 do not apply, if the statement is corrected to conform to the requirements of this chapter and returned to the department within 60 days after the report has been returned to the cooperative.

**Sec. 10.15.331. Filing notice of change of officer or director.** (a) In the event of a change of an officer or director of a corporation during the year following the filing of the biennial report, the corporation shall file notice of change amending that report before July 2 of that year.

(b) The notice shall be filed in the office of the commissioner and must state the name and current address of a director or officer not stated in the corporation's last filed biennial report, and the name of the person replaced and the office held. The notice shall be signed by an officer of the corporation.

## **ARTICLE 2. FORMATION OF COOPERATIVES**

### **Section**

**335. Procedure for incorporation**

**340. Filing of articles**

**345. Effect of certificate of incorporation**

**350. Contents of articles of incorporation; director liability**

**355. Other provisions in articles; relationship of articles to bylaws**

**360. Organizational meeting of directors**

**Sec. 10.15.335. Procedure for incorporation.** Three or more natural persons at least 19 years of age may act as incorporators of a cooperative by signing and delivering articles for the cooperative in duplicate to the commissioner.

**Sec. 10.15.340. Filing of articles.** (a) Upon finding that the articles conform to law, the commissioner shall, when all fees prescribed in this chapter have been paid,

- (1) stamp on each duplicate original the word "filed" and the date of the filing;
- (2) file one duplicate original in the commissioner's office;
- (3) issue a certificate of incorporation and affix the other duplicate original to the certificate.

(b) The certificate of incorporation together with the duplicate original affixed to it by the commissioner shall be returned to the incorporators or their representative.

**Sec. 10.15.345. Effect of certificate of incorporation.** Upon the issuance of the certificate of incorporation, the corporate existence begins, and the certificate of incorporation is conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the cooperative has been incorporated under this chapter, except as against the state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the cooperative.

**Sec. 10.15.350. Contents of articles of incorporation; director liability.** (a) The articles of incorporation must set forth

- (1) the name of the cooperative and that it is a cooperative;
- (2) the period of duration, which may be perpetual;
- (3) the purposes for which the cooperative is organized;
- (4) whether the cooperative is organized with or without membership stock, the amount of the membership fee, and the limitations, if any, on transfer of a membership;
- (5) the number and par value, if any, of shares of each authorized class of stock, and if more than one class is authorized, the designation, preferences, limitations and relative rights of each class;
- (6) which classes of stock, if any, are membership stock, and the limitations upon transfer, if any, applicable to the classes of membership stock;

- (7) any limitation of the right to acquire or recall stock;
- (8) the basis of distribution of assets in the event of dissolution or liquidation;
- (9) the address of its initial registered office and the name of its initial registered agent at that address;
- (10) the number of directors, not less than three, constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of the members or until their successors are elected and take office;

(11) the name and address of each incorporator.

(b) In addition to the matters required to be set out in the articles of incorporation by (a) of this section, the articles of incorporation may also contain a provision eliminating or limiting the personal liability of a director to the corporation or its members for monetary damages for the breach of fiduciary duty as a director. The articles of incorporation may not eliminate or limit the liability of a director for

- (1) a breach of a director's duty of loyalty to the corporation;
- (2) acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- (3) wilful or negligent conduct involved in the payment of dividends or the redemption of stock from other than lawfully available funds; or

(4) a transaction from which the director derives an improper personal benefit.

(c) The provisions of (b) of this section do not eliminate or limit the liability of a director for an act or omission that occurs before the effective date of the articles of incorporation or of an amendment to the articles of incorporation authorized by (b) of this section.

**Sec. 10.15.355. Other provisions in articles; relationship of articles to bylaws.** It is not necessary to set forth in the articles the corporate powers enumerated in this chapter. The articles may include additional provisions, not inconsistent with law, for the regulation of the internal affairs of the cooperative, including any provision which under this chapter is required or permitted to be set forth in the bylaws. A provision required or permitted in the bylaws has equal force and effect if stated in the articles. Whenever a provision of the articles is inconsistent with a bylaw, the articles control.

**Sec. 10.15.360. Organizational meeting of directors.** After the issuance of the certificate of incorporation an organizational meeting of the board of directors named in the articles shall be held, either inside or outside the state, at the call of a majority of the incorporators for the purpose of adopting bylaws, electing officers and transacting such other business as may come before the meeting.

### ARTICLE 3. AMENDMENT AND RESTATEMENT OF ARTICLES

#### Section

365. Amendment of articles
370. Procedure for adopting amendments
375. Shareholder and member voting on amendments to articles
380. Execution and content of articles of amendment
385. Filing of articles of amendment
390. Effect of amendments
395. Governing law

**Sec. 10.15.365. Amendment of articles.** A cooperative may amend its articles from time to time as may be desired, so long as its articles as amended contain only those provisions which might be lawfully contained in the original articles at the time of making the amendment, and, if a change in shares or the rights of shareholders or members, or an exchange, reclassification, or cancellation of shares or the rights of shareholders or members is to be made, those provisions necessary to effect the change, exchange, reclassification, or cancellation.

**Sec. 10.15.370. Procedure for adopting amendments.** (a) An amendment to the articles shall be made in the manner set out in this section.

(b) The board shall adopt a resolution setting forth the proposed amendment and directing it to be submitted to a vote at an annual or special meeting of the members of the cooperative.

(c) Written notice setting out the proposed amendment or a summary of the changes to be effected by the amendment shall be given to each member of record within the time and in the manner provided in this chapter for the giving of notice of meetings of members. If the meeting is an annual meeting, the proposed amendment or the summary may be included in the notice of the annual meeting.

(d) At the meeting the members shall vote on the proposed amendment. The proposed amendment is adopted if it receives the affirmative vote of a majority of the member votes cast. If shareholders are entitled by this chapter to vote on the proposed amendment, the proposed amendment is adopted if it receives the approval of shareholders as specified in this chapter, as well as the affirmative vote of a majority of member votes cast. Any number of amendments may be submitted to the members and voted upon by them at one meeting.

**Sec. 10.15.375. Shareholder and member voting on amendments to articles.** (a) If a proposed amendment to articles would affect a shareholder, the shareholder, whether or not permitted to vote by the articles, may cast one vote on the amendment regardless of the dollar amount of stock or number of affected classes of stock held by the shareholder. However, the articles may permit the affected shareholder to cast one vote for each share of stock the shareholder holds other than membership stock. A member holding stock affected by a proposed amendment may vote both as a member and as an affected shareholder.

(b) If a shareholder is entitled to vote on a proposed amendment, the meeting at which the proposed amendment is to be voted upon shall be a joint meeting of members and affected shareholders. Notice of the meeting together with a copy of the proposed amendment or a summary of the changes to be effected by the amendment shall be given to each shareholder of record entitled to vote on the amendment within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed amendment is adopted if it receives the affirmative vote of a majority of the votes of the affected shareholders entitled to vote.

(c) For the purpose of this section, a shareholder is affected as to a class of stock owned by the shareholder if an amendment would expressly

(1) decrease the dividends to which the class is entitled or change the method by which the dividend rate on the class is fixed;

(2) restrict rights to transfer the class;

(3) give to another existing or new class of stock or equity interest not previously entitled to it preference as to dividends or upon dissolution which is the same or higher than preferences of that class;

(4) change the par value of shares of the class or of any other class having the same or higher preferences as to dividends or upon dissolution;

(5) increase the number of authorized shares of a class having higher preferences as to dividends or upon dissolution;

(6) require or permit an exchange of shares of a class with lower preferences as to dividends or upon dissolution for shares of that class or any other class with the same or higher preferences.

**Sec. 10.15.380. Execution and content of articles of amendment.** Following adoption of an amendment to the articles, it shall be executed in duplicate by the cooperative by its president or a vice-president and by its secretary or an assistant secretary and must set out

(1) the name of the cooperative;

(2) if an amendment changes a provision of the original or amended articles, an identification by reference or description of the affected provision and a statement of its text as it is amended to read, or, if an amendment strikes or deletes a provision of the original or amended articles, an identification by reference or description of the provision stricken or deleted and a statement that it is stricken or deleted, and, if the amendment is an addition to the original or amended articles, a statement of that fact and the full text of the provision added;

(3) the date of the adoption of the amendment by the members;

(4) the numbers of members voting for and against the amendment;

(5) if affected shareholders had the right to vote, the number of affected shareholders, the number of shareholder votes entitled to be voted on the amendment, and the number of shareholder votes cast for and against the amendment.

**Sec. 10.15.385. Filing of articles of amendment.** Duplicate originals of the articles of amendment shall be filed, and a certificate of amendment shall be issued and delivered to the commissioner.

**Sec. 10.15.390. Effect of amendments.** An amendment does not affect an existing cause of action in favor of or against the cooperative, or a pending suit to which the cooperative is a party, or the existing rights of persons other than members or affected shareholders. If the cooperative's name is changed by amendment, a suit brought by or against the cooperative under its former name does not abate for that reason.

**Sec. 10.15.395. Governing law.** The provisions of AS 10.06 (Alaska Corporations Code) relating to restated articles of business corporations apply to cooperatives, except that the restated articles need not set forth the amount of stated capital.

**ARTICLE 4.**  
**MERGER, CONSOLIDATION, AND CONVERSION**  
**OF CORPORATION INTO COOPERATIVE**

**Section**

- 400. Merger and consolidation**
- 405. Approval and contents of plan of merger or consolidation**
- 410. Adoption of plan of merger or consolidation**
- 415. Abandonment of plan of merger or consolidation**
- 420. Execution of articles of merger or consolidation**
- 425. Contents of articles**
- 430. Filing of articles**
- 435. Effect of merger or consolidation**
- 440. Merger or consolidation of cooperatives and domestic and foreign corporations**
- 445. Influence of the nature of the surviving or new corporation upon the effect of merger or consolidation**
- 455. Definitions**

**Sec. 10.15.400. Merger and consolidation.** Two or more cooperatives may merge or consolidate pursuant to a plan of merger or consolidation adopted in the manner provided in AS 10.15.405 - 10.15.415.

**Sec. 10.15.405. Approval and contents of plan of merger or consolidation.** The board of each cooperative shall, by resolution adopted by each board, approve a plan of merger or consolidation setting forth

- (1) the names of the cooperatives proposing to merge or consolidate, and the name of the cooperative into which they propose to merge or the name of the new cooperative into which they proposed to consolidate;
- (2) the terms and conditions of the proposed merger or consolidation;
- (3) the effect of the proposed merger or consolidation on all members and shareholders of each of the cooperatives;
- (4) in the case of a plan for consolidation, the articles of the new cooperative, which must include all of the statements required to be set forth in articles for cooperatives organized under this chapter;
- (5) other provisions with respect to the proposed merger or consolidation considered necessary or desirable.

**Sec. 10.15.410. Adoption of plan of merger or consolidation.** The board of each cooperative, upon approving the plan of merger or plan of consolidation, shall by resolution direct that the plan be submitted to a vote at a meeting of members and shareholders, or if there are no shareholders at an annual or a special meeting of members. Written notice shall be given to each member and each shareholder in the manner provided in this chapter for meetings of members, and adoption of the plan shall be by affirmative vote of a majority of the member votes cast and affirmative vote of a majority of shareholder votes entitled to be cast.

**Sec. 10.15.415. Abandonment of plan of merger or consolidation.** After adoption of the plan, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned under provisions, if any, set forth in the plan of merger or consolidation.

**Sec. 10.15.420. Execution of articles of merger or consolidation.** Upon adoption of the plan of merger or consolidation, articles of merger or articles of consolidation, as the case may be, shall be executed in duplicate by each cooperative by its president or a vice-president and by its secretary or an assistant secretary.

**Sec. 10.15.425. Contents of articles.** The articles of merger or consolidation must set out

- (1) the plan of merger or plan of consolidation;
- (2) the date of adoption of the plan;
- (3) as to each cooperative, the number of member votes cast for and against the plan;
- (4) as to each cooperative, the number, if any, of shareholders, the number of shareholder votes entitled to be voted on the plan, and the number of shareholder votes cast for and against the plan.

**Sec. 10.15.430. Filing of articles.** Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the commissioner, who, upon finding the articles conform to law, shall, when all fees and charges prescribed in this chapter have been paid,

- (1) endorse on each duplicate original the word "filed" and the date of the filing;
- (2) file one of the duplicate originals in the commissioner's office;

(3) issue and deliver to the surviving or new cooperative or to its representative, a certificate of merger or a certificate of consolidation to which the commissioner shall affix the other duplicate original, and the merger or consolidation is effective upon the issuance of the certificate.

**Sec. 10.15.435. Effect of merger or consolidation.** When the merger or consolidation is effective

(1) the several cooperatives which are parties to the plan of merger or consolidation shall be a single cooperative, which, in case of a merger, shall be that cooperative designated in the plan of merger as the surviving cooperative, and, in the case of a consolidation, shall be the new cooperative provided for in the plan of consolidation;

(2) the separate existence of all cooperatives which are parties to the plan of merger or consolidation, except the surviving or new cooperative, ceases;

(3) the surviving or new cooperative possesses all the rights, privileges, immunities and franchises of a public or a private nature of each of the merging or consolidating cooperatives; and all property, real, personal and mixed, all debts due on whatever account, including subscriptions to shares, all other choses in action, and all and every other interest, of or belonging to or due to each of the cooperatives merged or consolidated are transferred to and vested in the single cooperative without further act or deed; and the title to real estate or any interest in real estate vested in the cooperatives does not revert or is not in any way impaired by reason of the merger or consolidation;

(4) the surviving or new cooperative is thereafter responsible and liable for the liabilities and obligations of each of the cooperatives merged or consolidated; and any existing claim or pending action or proceeding by or against the cooperatives may be prosecuted as if the merger or consolidation had not taken place, or the surviving or new cooperative may be substituted in its place; and the rights of creditors and liens upon the property of a cooperative are not impaired by the merger or consolidation;

(5) in the case of a merger, the articles of the surviving cooperative are considered amended to the extent, if any, that changes in its articles are stated in the plan of merger; and in case of a consolidation, the statements set forth in the articles of consolidation which are required or permitted to be set forth in the articles of cooperatives organized under this chapter are considered the original articles of the new cooperative.

**Sec. 10.15.440. Merger or consolidation of cooperatives and domestic and foreign corporations.** (a) One or more cooperatives may merge or consolidate with or into one or more of the following classes of business organizations:

(1) a domestic corporation if the domestic corporation complies with AS 10.06 (Alaska Corporations Code) relating to merger or consolidation;

(2) a foreign cooperative if the merger or consolidation is permitted by the laws of the state under which the foreign cooperative is organized and the foreign cooperative complies with the applicable provisions of those laws;

(3) a foreign business corporation if the merger or consolidation is permitted by the laws of the state under which the foreign corporation is organized and the foreign corporation complies with the applicable provisions of those laws.

(b) Each cooperative merging or consolidating under this section shall comply with the provisions of this chapter relating to merger or consolidation.

(c) If the surviving or new business corporation or cooperative, as the case may be, is governed by the laws of another state, it shall comply with the provisions of the AS 10.06 (Alaska Corporations Code) with respect to foreign corporations if it is to transact business in this state.

**Sec. 10.15.445. Influence of the nature of the surviving or new corporation upon the effect of merger or consolidation.** (a) If the surviving or new corporation is a cooperative, the effect of the merger or consolidation is the same as provided in this chapter for the merger or consolidation of cooperatives.

(b) If the surviving or new corporation is a domestic corporation, the effect of the merger or consolidation is the same as provided in AS 10.06 (Alaska Corporations Code) for the merger or consolidation of domestic corporations.

(c) If the surviving or new corporation or cooperative is governed by the laws of another state, the effect of the merger or consolidation is the same as in the case of the merger or consolidation of cooperatives or domestic corporations, as the case may be, except insofar as the laws of the other state provide otherwise.

**Sec. 10.15.450. Conversion of corporation into cooperative.** *[Repealed, Sec. 29 ch 60 SLA 2013.]*

**Sec. 10.15.455. Definitions.** In AS 10.15.400 - 10.15.455,

(1) "new cooperative" means the new cooperative provided for in the plan of consolidation;

(2) "surviving cooperative" means the cooperative designated in the plan of merger as the surviving cooperative.

**ARTICLE 5.  
DISSOLUTION**

**Section**

- 460. Voluntary dissolution by act of cooperative**
- 465. Execution and content of statement of intent to dissolve**
- 470. Filing statement of intent to dissolve**
- 475. Procedure after filing of statement of intent to dissolve**
- 480. Revocation of voluntary dissolution proceedings by act of cooperative**
- 485. Execution and content of statement of revocation of voluntary dissolution proceedings**
- 490. Filing statement of revocation of voluntary dissolution proceedings**
- 495. Articles of dissolution**
- 500. Filing articles of dissolution and issuance of certificate of dissolution**
- 505. Involuntary dissolution and cancellation of corporate filings**
- 510. Jurisdiction of court to liquidate assets and business of cooperative**
- 515. Joinder of members or shareholders unnecessary**
- 520. Deposit with department of amount due persons who cannot be found; unknown persons, or incompetent persons**

**Sec. 10.15.460. Voluntary dissolution by act of cooperative.** (a) A cooperative may be dissolved by the act of the cooperative, when authorized in the manner set out in this section.

(b) The board shall adopt a resolution directing the question of dissolution to be submitted to a vote at an annual or special meeting of members.

(c) Written notice shall be given to each member in the manner provided in this chapter for the giving of notice of meetings of members, and must state that the purpose, or one of the purposes, of the meeting is to consider the advisability of dissolving the cooperative.

(d) At the meeting a vote of members shall be taken on a resolution to dissolve the cooperative. The resolution is adopted if it receives the affirmative vote of two-thirds of the member votes cast. The articles may permit shareholders to vote on a resolution for dissolution, and may fix the proportion of authorized shareholder votes required for adoption.

**Sec. 10.15.465. Execution and content of statement of intent to dissolve.** Upon the adoption of the resolution, a statement of intent to dissolve shall be executed in duplicate by the cooperative by its president or a vice-president and by its secretary or an assistant secretary and must set out

- (1) the name of the cooperative;
- (2) the names and addresses of its officers;
- (3) the names and addresses of its directors;
- (4) a copy of the resolution adopted authorizing the dissolution of the cooperative;
- (5) the date of the adoption of the resolution;
- (6) the number of member votes for and against the resolution;
- (7) if shareholders were authorized to vote on the resolution, the total number of authorized shareholder votes, the number of votes cast for and against the resolution, and the number of votes required by the articles for adoption.

**Sec. 10.15.470. Filing statement of intent to dissolve.** (a) Duplicate originals of the statement of intent to dissolve shall be filed and handled by the department in the manner provided in AS 10.06 (Alaska Corporations Code) with respect to business corporations.

(b) The filing of a statement of intent to dissolve has the same effect as to the cooperative as is provided in AS 10.06 (Alaska Corporations Code) for business corporations.

**Sec. 10.15.475. Procedure after filing of statement of intent to dissolve.** After the filing by the department of a statement of intent to dissolve

(1) the cooperative shall proceed to collect its assets, convey and dispose of the property not to be distributed in kind to its members or shareholders, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, among the persons entitled to them by law, the articles and the bylaws;

(2) the cooperative, at any time during the liquidation of its business and affairs, may apply to a court within the state and judicial district in which the registered office or principal place of business of the cooperative is situated to have the liquidation continued under the supervision of the court as provided in this chapter;

(3) any cooperative which has filed a statement of intent to dissolve that does not, within two years from the date of filing, carry the dissolution to a conclusion shall be involuntarily dissolved as provided in AS 10.06 (Alaska Corporations Code).

**Sec. 10.15.480. Revocation of voluntary dissolution proceedings by act of cooperative.** A cooperative, at any time prior to the issuance of a certificate of dissolution by the department, may revoke a voluntary dissolution proceeding by adoption of a resolution of revocation in the same manner and by the same vote of members and shareholders required by this chapter for adoption of a resolution to dissolve.

**Sec. 10.15.485. Execution and content of statement of revocation of voluntary dissolution proceedings.** Upon the adoption of the resolution of revocation, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the cooperative by its president or a vice-president and its secretary or an assistant secretary and must set out a copy of the adopted resolution and other pertinent information as required by AS 10.15.460 and 10.15.465 to be set out in a statement of intent to dissolve.

**Sec. 10.15.490. Filing statement of revocation of voluntary dissolution proceedings.** (a) Duplicate originals of the statement of revocation of voluntary dissolution proceedings shall be handled by the department in the same manner as provided by this chapter for filing of a statement of intent to dissolve.

(b) Upon the filing by the department of the statement of revocation of voluntary dissolution proceedings, a revocation of the voluntary dissolution proceedings is effective and the cooperative may again carry on its business.

**Sec. 10.15.495. Articles of dissolution.** If voluntary dissolution proceedings have not been revoked, when all debts, liabilities, and obligations of the cooperative have been paid and discharged, or adequate provision has been made for their payment and discharge, and all of the remaining property and assets of the cooperative have been distributed to the persons entitled to them, articles of dissolution shall be executed in duplicate by the cooperative by its president or a vice-president and its secretary or an assistant secretary. The articles of dissolution must set out

(1) the name of the cooperative;

(2) that the department has filed a statement of intent to dissolve the cooperative and the date on which the statement was filed;

(3) that all the property and assets of the cooperative remaining after payment or discharge, or adequate provision for payment or discharge of all debts, obligations, and liabilities of the cooperative, have been distributed to the persons entitled to them in accordance with their rights and interests;

(4) that there are no suits pending against the cooperative in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending suit.

**Sec. 10.15.500. Filing articles of dissolution and issuance of certificate of dissolution.** (a) Duplicate originals of the articles of dissolution shall be filed and a certificate of dissolution shall be issued as provided in AS 10.06 (Alaska Corporations Code).

(b) The certificate of dissolution together with the duplicate original of the articles of dissolution affixed to it by the department shall be returned to the representative of the dissolved cooperative. Upon the issuance of the certificate of dissolution the existence of the cooperative ceases, except for the purpose of suits, other proceedings and appropriate corporate action by members, shareholders, directors and officers as provided in this chapter.

**Sec. 10.15.505. Involuntary dissolution and cancellation of corporate filings.** The provisions in AS 10.06 (Alaska Corporations Code) relating to involuntary dissolution of business corporations and to the cancellation of certain corporate filings apply to cooperatives.

**Sec. 10.15.510. Jurisdiction of court to liquidate assets and business of cooperative.** In addition to any other instances in which the law provides the power, a court may liquidate the assets and business of a cooperative

(1) in an action by a member or shareholder when it is established that the members are deadlocked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or the corporate assets are being misapplied or wasted;

(2) in an action by a creditor when the claim of the creditor has been reduced to judgment and an execution has been returned unsatisfied and it is established that the cooperative is insolvent; or when the cooperative has admitted in writing that the claim of the creditor is due and owing and it is established that the cooperative is insolvent;

(3) upon application by a cooperative which has filed a statement of intent to dissolve as provided in this chapter to have its liquidation continued under the supervision of the court;

(4) when an action has been filed by the attorney general to dissolve a cooperative and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.

**Sec. 10.15.515. Joinder of members or shareholders unnecessary.** It is not necessary to make members or shareholders parties to an action or proceeding under AS 10.15.510 unless relief is sought against them personally.

**Sec. 10.15.520. Deposit with department of amount due persons who cannot be found; unknown persons, or incompetent persons.** Upon the voluntary or involuntary dissolution of a cooperative, the portion of the assets distributable to a creditor, member, shareholder, or patron or other person unknown or who cannot be found, or who is under a disability with no person legally competent to receive the distributive portion, shall be reduced to cash and, within six months after the final dividend in the liquidation or winding up is payable, shall be deposited with the department. The receiver or other liquidating agent shall prepare in duplicate a statement containing the names and last known addresses of the persons entitled to the funds and shall file the statement with the department. The department shall handle the funds in accordance with AS 34.45.110 - 34.45.780.

## **ARTICLE 6. FOREIGN COOPERATIVES**

### **Section**

#### **525. Rights, exemptions, and privileges of foreign cooperatives**

**Sec. 10.15.525. Rights, exemptions, and privileges of foreign cooperatives.** A foreign cooperative which has a member residing in the state, and which distributes its proceeds and savings according to this chapter or the law of the state where it is incorporated, is entitled to all rights, exemptions, and privileges of a cooperative organized under this chapter, if it is authorized to do business in the state as provided in AS 10.06 (Alaska Corporations Code).

## **ARTICLE 7. FEES, CHARGES, AND PENALTIES**

### **Section**

- 530. Biennial license fee**
- 545. Amount of license fee**
- 550. Penalty**
- 555. Miscellaneous fees and charges**
- 560. Payment required for filing**

**Sec. 10.15.530. Biennial license fee.** Each cooperative not organized and operated for nonprofit religious, charitable, cemetery, or educational purposes shall pay to the department a biennial license fee. The fee shall be paid before July 2 of the reporting year.

**Sec. 10.15.535., 10.15.540. Determination of license fee for cooperative authorized to issue capital stock; valuation of no-par stock.** [Repealed, Sec. 92 ch 36 SLA 1990].

**Sec. 10.15.545. Amount of license fee.** The license fee of each cooperative shall be established by the department by regulation.

**Sec. 10.15.550. Penalty.** A cooperative that fails to pay the annual license fee before August 15 shall pay a penalty of \$10 for each year or part of a year of delinquency.

**Sec. 10.15.555. Miscellaneous fees and charges.** (a) The department shall establish by regulation and charge and collect from a cooperative fees for filing

- (1) articles of incorporation or articles of consolidation for a new cooperative;
- (2) articles of amendment, restated articles, or articles of merger;
- (3) statement of intent to dissolve;
- (4) statement of revocation of voluntary dissolution proceedings;
- (5) articles of dissolution;
- (6) all other statements.

(b) The department may by regulation charge each cooperative corporation subject to this chapter a fixed fee in place of charging cooperative corporations the various fees specified in this chapter and for routine administrative services rendered to the cooperative corporation by the department. Fixed fees established under this subsection must be based on the department's actual cost of administering the activity or service for which the fee is charged.

**Sec. 10.15.560. Payment required for filing.** The department may not file a document until all fees and charges required to be paid have been paid or while the cooperative is in default in the payment of fees, charges or penalties provided in this chapter to be paid by or assessed against it.

**Sec. 10.15.563. Accounting and disposition of fees.** *[Repealed, Sec. 28 ch 90 SLA 1991.]*

## ARTICLE 8. MISCELLANEOUS PROVISIONS

### Section

**565. Failure to approve document**

**570. Declaration of public policy that cooperatives are not in restraint of trade**

**575. Use of term "cooperative"**

**578. Distinguishable name**

**Sec. 10.15.565. Failure to approve document.** If the department fails to approve articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by this chapter to be approved before the document is filed, the procedure and remedies are those specified in AS 10.06 (Alaska Corporations Code) as to business corporations.

**Sec. 10.15.570. Declaration of public policy that cooperatives are not in restraint of trade.** It is the public policy of the state to encourage the efficient production and distribution of agricultural and other products derived from its natural resources or labor resources. Accordingly, a cooperative that operates in compliance with the provisions of this chapter and that does not, during its fiscal year, market products for nonmember patrons in an amount greater in value than the products marketed for its members is not a conspiracy or combination in restraint of trade, or an illegal monopoly. The contracts of a cooperative authorized by this chapter, whether or not required by the cooperative as a condition of membership or of doing business with the cooperative, may not be construed as an unlawful restraint of trade, or as part of a conspiracy or combination to accomplish an improper or illegal purpose or act.

**Sec. 10.15.575. Use of term "cooperative".** (a) A person other than a cooperative association incorporated under this chapter or a previous law of the state may not use the term "cooperative," or any variation of the term, as part of its corporate or other business name or title. However, this section does not apply to cooperatives organized to generate and transmit electric energy and power or to furnish electric or telephone or related telecommunications service.

(b) A cooperative may enjoy a violation of this section upon suit without a showing of damage to itself.

**Sec. 10.15.578. Distinguishable name.** The name of a cooperative association must be distinguishable on the records of the department from the name of any other organized entity and from a reserved or registered name. The department may adopt regulations under AS 44.62 (Administrative Procedure Act) to implement this section. In this section, "organized entity" and "reserved or registered name" have the meanings given in AS 10.35.040.

## ARTICLE 9. GENERAL PROVISIONS

### Section

**580. Powers of department**

**585. Application of chapter**

**590. Effect of amendment or repeal of chapter**

**595. Definitions**

**600. Short title**

**Sec. 10.15.580. Powers of department.** The department has the power and authority reasonably necessary to administer this chapter efficiently and to perform the duties imposed by this chapter.

**Sec. 10.15.585. Application of chapter.** This chapter applies to the fullest extent permitted by the laws and constitution of the United States and of the state to all existing cooperative associations incorporated under a previously existing law of the state relating to incorporation of cooperative associations. However, this section does

not apply to cooperatives organized to generate and transmit electric energy and power or to furnish electric or telephone or related telecommunications service.

**Sec. 10.15.590. Effect of amendment or repeal of chapter.** This chapter may be amended, repealed, or modified, but an amendment, repeal, or modification does not affect vested rights or take away or impair a remedy for a liability that has been previously incurred.

**Sec. 10.15.595. Definitions.** In this chapter, unless the context otherwise requires,

- (1) "articles" means articles of incorporation;
- (2) "board" means board of directors;
- (3) "commissioner" means the commissioner of commerce, community, and economic development;
- (4) "cooperative" means a cooperative corporation subject to the provisions of this chapter;
- (5) "corporation" means a corporation that is not a cooperative;
- (6) "court" means superior court;
- (7) "department" means the Department of Commerce, Community, and Economic Development;
- (8) "foreign cooperative" means a cooperative corporation organized under laws other than the laws of this state;
- (9) "member" means a person who has been qualified and accepted for membership in a cooperative;
- (10) "membership stock" means a class of stock, continuous ownership of which is required for membership in a cooperative;
- (11) "shareholder" means a holder of shares of capital stock of a cooperative other than membership stock.

**Sec. 10.15.600. Short title.** This chapter may be cited as the Alaska Cooperative Corporation Act.

## CHAPTER 20. ALASKA NONPROFIT CORPORATION ACT

### Article

1. Substantive Provisions (§§ 10.20.005 – 10.20.141)
2. Formation of Corporations (§§ 10.20.146 – 10.20.166)
3. Amendment (§§ 10.20.171 – 10.20.211)
4. Merger, Consolidation, and Disposition of Assets (§§ 10.20.216 – 10.20.285)
5. Dissolution (§§ 10.20.290 – 10.20.452)
6. Foreign Corporations (§§ 10.20.455 – 10.20.615)
7. Biennial reports and Notices (§§ 10.20.620 – 10.20.631)
8. Fees and Charges (§§ 10.20.635, 10.20.640)
9. Penalties (§§ 10.20.645, 10.20.650)
10. Miscellaneous Provisions (§§ 10.20.655 – 10.20.700)
11. General Provisions (§§ 10.20.905 – 10.20.925)

## ARTICLE 1. SUBSTANTIVE PROVISIONS

### Section

05. Purposes
07. Corporations organized under Alaska Native Claims Settlement Act
11. General powers
16. Defense of ultra vires
21. Corporate name
26. Registered office and registered agent
31. Filing list of registered corporations
36. Change of registered office or agent
41. Change of location or resignation of registered agent
46. Service on corporation
51. Members and liability of directors, officers, employees, and members
56. Bylaws
61. Meetings of members
66. Notice of meetings

- 71. Voting; quorum
- 76. Quorum of members
- 81. Board of directors
- 86. Number of directors
- 91. Membership and term of office of first board of directors
- 96. Election and terms of directors
- 101. Vacancies
- 106. Quorum of directors
- 111. Executive committee
- 116. Place and notice of directors' meetings
- 121. Officers
- 126. Removal of officers
- 131. Books and records; inspection
- 136. Shares of stock and dividends prohibited; compensation, benefits, and distributions
- 141. Loans to directors and officers prohibited

**Sec. 10.20.005. Purposes.** Corporations may be organized under this chapter for any lawful purpose, including, but not limited to, one or more of the following: charitable; religious; benevolent; eleemosynary; educational; civic; cemetery; patriotic; political; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; and professional, commercial, industrial, or trade association purposes. Trade unions and other labor organizations may also be organized under this chapter, but cooperative corporations, electric and telephone cooperatives, and organizations subject to state insurance or banking laws may not be organized under this chapter.

**Sec. 10.20.007. Corporations organized under Alaska Native Claims Settlement Act.** A village corporation organized under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act) may be incorporated under and subject to this chapter except the name of the corporation may not contain the word "village" or otherwise imply that the corporation is a municipal corporation; however, the name of a village may be used in the corporate name.

**Sec. 10.20.011. General powers.** A corporation may

- (1) have perpetual succession by its corporate name unless its duration is limited by its articles of incorporation;
- (2) sue and be sued, complain and defend, in its corporate name;
- (3) adopt and use a corporate seal or a facsimile thereof, which may be altered at pleasure, and which may be impressed or affixed or in any manner reproduced;
- (4) purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest in the property, wherever situated;
- (5) sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;
- (6) lend money to its employees other than its officers and directors and otherwise assist its employees, officers and directors;
- (7) purchase, take, receive, subscribe to, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof;
- (8) make contracts, incur liabilities, borrow money at rates of interests the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income;
- (9) lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;
- (10) transact its business, carry on its operations, have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States, or in any foreign country;
- (11) elect or appoint officers and agents of the corporation, who may be directors or members, define their duties and fix their compensation;
- (12) make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of the state, for the administration and regulation of the affairs of the corporation;
- (13) make donations for public welfare or for charitable, scientific or educational purposes; and in time of war make donations in aid of war activities;
- (14) indemnify a director, officer or former director or officer of the corporation, or a person who has served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor, against expenses actually and reasonably incurred by that person in connection with the defense of any

action, suit or proceeding, civil or criminal, in which that person is made a party by reason of being or having been a director or officer, except in relation to matters in which that person was adjudged, in the action, suit or proceeding, to be liable for negligence or misconduct in the performance of corporate duties; and to make any other indemnification authorized by the articles of incorporation or bylaws, or resolution adopted after notice by the members entitled to vote;

(15) pay pensions and establish pension plans or pension trusts for its directors, officers and employees;

(16) cease its corporate activities and surrender its corporate franchise;

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

**Sec. 10.20.016. Defense of ultra vires.** (a) An act of a corporation and a conveyance or transfer of real or personal property to or by a corporation is not invalid because the corporation did not have capacity or power to perform the act or to convey or receive the property. However, lack of capacity or power may be asserted as provided in this section.

(b) The assertion may be made in a proceeding by a member or director against the corporation to enjoin the performance of an act or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being or is to be performed or made under a contract to which the corporation is a party, the court may, if the parties to the contract are parties to the proceeding and if the court considers it equitable, set aside and enjoin the performance of the contract. In so doing the court may allow compensation to the corporation or to the other parties to the contract for the loss or damage sustained by either of them resulting from the action of the court in setting aside and enjoining the performance of the contract. The court may not award anticipated profits to be derived from the performance of the contract as a loss or damage sustained.

(c) The assertion may be made 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 directors of the corporation.

(d) The assertion may be made in a proceeding by the attorney general to dissolve the corporation, or to enjoin the corporation from the transaction of unauthorized business.

**Sec. 10.20.021. Corporate name.** (a) The name of a corporation may not contain a word or phrase that indicates or implies that it is organized for a purpose other than one or more of the purposes contained in the articles of incorporation of the corporation.

(b) The name of the corporation must be distinguishable on the records of the department from the name of any other organized entity and from a reserved or registered name. The department may adopt regulations under AS 44.62 (Administrative Procedure Act) to implement this subsection. In this subsection, "organized entity" and "reserved or registered name" have the meanings given in AS 10.35.040.

**Sec. 10.20.026. Registered office and registered agent.** A corporation shall continuously maintain in the state a registered office which may be, but need not be, the same as its place of business, and a registered agent. The registered agent may be either an individual resident of the state whose business office is the same as the registered office, or a domestic or foreign corporation authorized to transact business in the state whose business office is the same as the registered office.

**Sec. 10.20.031. Filing list of registered corporations.** The department shall file a list of the name of each corporation, the address of the registered office and the name and address of the registered agent with each clerk of the superior court. The department shall provide a periodic supplement to the list indicating additions, deletions and changes at least once every six months. The commissioner shall make the list available to the public for a fee prescribed by the commissioner.

**Sec. 10.20.036. Change of registered office or agent.** (a) A corporation, domestic or foreign, may change its registered office, agent, or both, by filing with the department a statement signed by the president or the vice-president setting out

(1) the name of the corporation;

(2) the address of its registered office;

(3) the address of its new registered office if the registered office is to be changed;

(4) the name of its registered agent;

(5) the name of its new registered agent if its registered agent is to be changed;

(6) that the change is authorized by resolution of its board of directors.

(b) Upon finding that the statement complies with this chapter, the commissioner shall file it in the commissioner's office. The change becomes effective when the statement is filed.

**Sec. 10.20.041. Change of location or resignation of registered agent.** (a) If the registered agent of a corporation, domestic or foreign, changes the location of an office from one address to another within a city or town, or from one city or town in the state to another, the agent may change the registered office for each corporation for whom the agent is acting as registered agent by filing in the office of the commissioner a statement setting out

- (1) the name of the agent;
- (2) the address of the office before change;
- (3) the address to which the office is changed; and
- (4) a list of corporations for whom the agent is furnishing a registered office.

(b) The statement in (a) of this section shall be executed by the registered agent in the agent's individual name and, if the agent is a corporation, domestic or foreign, it shall be executed by its president or a vice-president. The statement shall be delivered to the commissioner who, upon finding that it complies with this chapter, shall file it in the commissioner's office. The change becomes effective when the statement is filed.

(c) A registered agent may resign by filing a written notice, executed in duplicate, with the commissioner. The commissioner shall immediately mail a copy of the notice to the corporation at its registered office. The appointment of the agent terminates 30 days after receipt of the notice by the commissioner.

**Sec. 10.20.046. Service on corporation.** (a) The registered agent of a corporation is an agent upon whom process, notice or demand required or permitted by law to be served upon the corporation may be served.

(b) Whenever a corporation fails to appoint or maintain a registered agent in the state, the commissioner is an agent of the corporation upon whom the process, notice, or demand may be served. Service is made upon the commissioner as agent by leaving with the commissioner, or with a clerk having charge of the corporation department of the commissioner's office, duplicate copies of the process, notice or demand. When process, notice or demand is served on the commissioner, the commissioner shall immediately forward a copy of it by registered mail to the corporation at its registered office. Service on the commissioner is returnable in not less than 30 days.

(c) The commissioner shall keep a record of processes, notices, and demands served on the commissioner. The record must show the time of service and the commissioner's action with reference to the service.

(d) This chapter does not limit or affect the right to serve process, notice or demand required or permitted by law to be served upon a corporation in any other manner permitted by law.

**Sec. 10.20.051. Members and liability of directors, officers, employees, and members.** (a) A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of the class or classes, the manner of election or appointment, and the qualifications and rights of the members of each class shall be set out in the articles of incorporation or the bylaws. If the corporation has no members, that fact shall be set out in the articles of incorporation or the bylaws. A corporation may issue certificates evidencing membership.

(b) The directors, officers, employees, and members of the corporation are not, as such, liable on its obligations.

**Sec. 10.20.056. Bylaws.** The board of directors shall adopt the initial bylaws of a corporation. The power to adopt, alter, amend or repeal bylaws is vested in the board of directors unless it is reserved to the members by the articles of incorporation. The bylaws may contain provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

**Sec. 10.20.061. Meetings of members.** (a) Meetings of members may be held at a place, either inside or outside the state, which may be provided in the bylaws. In the absence of such a provision, all meetings shall be held at the registered office of the corporation in the state.

(b) An annual meeting of the members shall be held at a time provided in the bylaws. Failure to hold the annual meeting at the designated time does not work a forfeiture or dissolution of the corporation.

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

**Sec. 10.20.066. Notice of meetings.** Unless otherwise provided in the articles of incorporation or bylaws, written notice stating the manner, place, if the meeting is to be held at a designated place, day, and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at the meeting. If mailed, the notice shall be considered to be delivered when deposited in the United States mail addressed to the member at the member's address as it appears on the records of the corporation, with postage prepaid.

**Sec. 10.20.071. Voting; quorum.** (a) The right of the members, or any class or classes of members, to vote may be limited, enlarged, or denied to the extent specified in the articles of incorporation or the bylaws. Unless limited, enlarged, or denied, each member, regardless of class, is entitled to one vote on each matter submitted to a vote of members.

(b) A member entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by remote communication, by proxy executed in writing by the member or by the attorney-in-fact for the member, or by proxy executed by electronic transmission by the member or by the authorized attorney-in-fact of the member. A proxy is not valid after 11 months from the date of its execution, unless otherwise provided in the proxy. If directors or officers are to be elected by members, the bylaws may provide that the elections may be conducted by mail.

(c) The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate the member's vote and to give one candidate a number of votes equal to the member's vote multiplied by the number of directors to be elected, or by distributing the votes on the same principle among any number of the candidates.

(d) If a corporation has no members or its members have no right to vote, the directors shall have sole voting power.

(e) The articles of incorporation or the bylaws may provide the number or percentage of members entitled to vote represented in person, by remote communication, or by proxy, or the number or percentage of votes represented in person, by remote communication, or by proxy, which constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast on the matter to be voted on represented in person, by remote communication, or by proxy constitute a quorum. A majority of the votes entitled to be cast on a matter to be voted on by the members present or represented by proxy at a meeting at which the quorum is present is necessary for adoption unless a greater proportion is required by this chapter, the articles of incorporation or the bylaws.

(f) A proxy executed by electronic transmission must

(1) be directed to the person who will be the holder of the proxy or to a proxy solicitation person, including a proxy support service organization or similar agent that is authorized by the person who will be the holder of the proxy to receive the transmission; and

(2) include information that demonstrates that the stockholder authorized the transmission.

(g) In this section, "electronic transmission" has the meaning given in AS 10.06.990.

**Sec. 10.20.076. Quorum of members.** Unless otherwise provided in the articles of incorporation or the bylaws, members holding one-tenth of the votes entitled to be cast, represented in person, by remote communication, or by proxy, constitute a quorum at a meeting of members. However, in no event may a quorum consist of less than one-tenth of the votes entitled to vote at a meeting. If a quorum is present, the affirmative vote of a majority of the votes represented at the meeting and entitled to vote on the subject matter is the act of the members, unless the vote of a greater number is required by this chapter or the articles of incorporation or the bylaws.

**Sec. 10.20.081. Board of directors.** The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of the state or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

**Sec. 10.20.086. Number of directors.** (a) The number of directors of a corporation shall be at least three. The number of directors shall be fixed by the bylaws, except that the number constituting the initial board of directors shall be fixed by the articles of incorporation.

(b) The number of directors may be increased or decreased from time to time by amendment to the bylaws, but a decrease may not have the effect of shortening the term of an incumbent director.

(c) In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

**Sec. 10.20.091. Membership and term of office of first board of directors.** The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Each member holds office until the first annual election of directors or for the period specified in the articles of incorporation. If no term of office is specified, a director's term is one year.

**Sec. 10.20.096. Election and terms of directors.** At the first annual election of directors and at each annual meeting thereafter the members shall elect directors to hold office for the terms provided in the bylaws. Each director holds office for the term for which elected and until a successor is elected and qualified. The terms of office of directors may be staggered.

**Sec. 10.20.101. Vacancies.** A vacancy occurring in the board of directors and a directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner. A director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of the director's predecessor in office. A directorship to be filled by reason of an increase in the number of directors shall be filled by the board of directors for a term of office which continues only until the next election of directors. In no case may a vacancy continue for longer than six months or until the next annual meeting of the members, whichever occurs first.

**Sec. 10.20.106. Quorum of directors.** A majority of the number of directors fixed by the bylaws, or, in the absence of a bylaw fixing the number of directors, the number stated in the articles of incorporation, constitutes a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present is the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

**Sec. 10.20.111. Executive committee.** If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the number of directors fixed by the bylaws, or, in the absence of a bylaw fixing the number of directors, the number stated in the articles of incorporation, may designate two or more directors to constitute an executive committee, which, to the extent provided in the resolution or in the articles of incorporation or the bylaws of the corporation, may exercise the authority of the board of directors in the management of the corporation. The designation of the executive committee and the delegation of authority to it do not relieve the board of directors or any member of the board from responsibility imposed by law.

**Sec. 10.20.116. Place and notice of directors' meetings.** (a) Regular or special meetings of the board of directors may be held at a designated place, by remote communication, or at a designated place and by remote communication. The designated place may be inside or outside the state.

(b) Regular meetings of the board of directors may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held after the notice which shall be prescribed in the bylaws. Attendance of a director at a meeting constitutes a waiver of notice of the meeting, except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted or the purpose of a regular or special meeting of the board of directors need not be specified in the notice of the meeting unless required by the bylaws.

**Sec. 10.20.121. Officers.** (a) The officers of a corporation consist of a president, one or more vice presidents as prescribed by the bylaws, a secretary, and a treasurer. Each of the officers shall be elected by the board of directors at the time and in the manner prescribed by the bylaws. Other necessary officers and assistant officers and agents may be elected or appointed by the board of directors or chosen in the manner prescribed by the bylaws. Two or more offices may be held by the same person, except the offices of president and secretary.

(b) The articles of incorporation or bylaws may provide that an officer is an ex officio member of the board of directors.

(c) An officer may be designated by additional titles as provided in the articles of incorporation or bylaws.

**Sec. 10.20.126. Removal of officers.** An officer or agent may be removed by the board of directors, or by the executive committee, whenever in its judgment the best interests of the corporation will be served. Removal is without prejudice to the contract rights of the person removed. Election or appointment of an officer or agent does not of itself create contract rights.

**Sec. 10.20.131. Books and records; inspection.** (a) A corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office in the state a record of the names and addresses of its members entitled to vote.

(b) All books and records of a corporation may be inspected by any member, or an agent or attorney for the member, for any proper purpose at any reasonable time.

**Sec. 10.20.136. Shares of stock and dividends prohibited; compensation, benefits, and distributions.** A corporation may not have or issue shares of stock. No dividend may be paid and no part of the income or profit of a corporation may be distributed to its members, directors, or officers. A corporation may pay compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distribution to its members as

permitted by this chapter, and a payment, benefit, or distribution under this section may not be considered to be a dividend or a distribution of income or profit.

**Sec. 10.20.141. Loans to directors and officers prohibited.** A corporation may not make loans to its directors or officers. A director or officer who assents to or participates in the making of such a loan shall be liable to the corporation for the amount of the loan until its repayment.

## ARTICLE 2. FORMATION OF CORPORATIONS

### Section

**146. Incorporators**

**151. Articles of incorporation; relationship to bylaws; director liability**

**153. Provisions considered to be in articles of incorporation by operation of law; option to exclude provision**

**156. Filing of articles of incorporation**

**161. Effect of issuance of certificate of incorporation**

**166. Organizational meeting of directors; first meeting of members**

**Sec. 10.20.146. Incorporators.** Three or more natural persons at least 19 years of age may act as incorporators of a corporation by signing and delivering in duplicate to the commissioner articles of incorporation for the corporation.

**Sec. 10.20.151. Articles of incorporation; relationship to bylaws; director liability.** (a) The articles of incorporation must set out

(1) the name of the corporation;

(2) the period of its duration, which may be perpetual;

(3) the purpose or purposes for which the corporation is organized;

(4) provisions, not inconsistent with law, which the incorporators elect to set out in the articles of incorporation for the regulation of the internal affairs of the corporation, including provision for distribution of assets on dissolution or final liquidation;

(5) the address of its initial registered office, and the name of its initial registered agent at the address;

(6) the number of directors constituting the initial board of directors, and the names and addresses of the persons who are to serve as the initial directors;

(7) the name and address of each incorporator.

(b) It is not necessary to set out in the articles of incorporation any of the corporate powers enumerated in this chapter.

(c) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws is controlling. In all other cases, if a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

(d) In addition to the matters required to be set out in the articles of incorporation by (a) of this section, the articles of incorporation may also contain a provision eliminating or limiting the personal liability of a director to the corporation for monetary damages for the breach of fiduciary duty as a director. The articles of incorporation may not eliminate or limit the liability of a director for

(1) a breach of a director's duty of loyalty to the corporation;

(2) acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law; or

(3) a transaction from which the director derives an improper personal benefit.

(e) The provisions of (d) of this section do not eliminate or limit the liability of a director for an act or omission that occurs before the effective date of the articles of incorporation or of an amendment to the articles of incorporation authorized by (d) of this section.

**Sec. 10.20.153. Provisions considered to be in articles of incorporation by operation of law; option to exclude provision.** (a) The articles of incorporation of every nonprofit corporation which is a private foundation, as defined in 26 U.S.C. 509 (Internal Revenue Code of 1954), are considered to contain provisions prohibiting the corporation from

(1) engaging in an act of self-dealing, as defined in 26 U.S.C. 4941(d) (Internal Revenue Code of 1954), which would give rise to liability for the tax imposed by 26 U.S.C. 4941(a) (Internal Revenue Code of 1954);

(2) retaining excess business holdings, as defined in 26 U.S.C. 4943(c) (Internal Revenue Code of 1954), which would give rise to liability for the tax imposed by 26 U.S.C. 4943(a) (Internal Revenue Code of 1954);

(3) making an investment which would jeopardize the carrying out of any of its exempt purposes, within the meaning of 26 U.S.C. 4944 (Internal Revenue Code of 1954), so as to give rise to liability for the tax imposed by 26 U.S.C. 4944(a) (Internal Revenue Code of 1954); and

(4) making taxable expenditures, as defined in 26 U.S.C. 4945(d) (Internal Revenue Code of 1954), which would give rise to liability for the tax imposed by 26 U.S.C. 4945(a) (Internal Revenue Code of 1954).

(b) The articles of incorporation of every nonprofit corporation that is a private foundation, as defined in 26 U.S.C. 509 (Internal Revenue Code of 1954), are considered to contain a provision requiring the corporation to distribute, for the purposes specified in its articles of incorporation, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by 26 U.S.C. 4942(a) (Internal Revenue Code of 1954).

(c) A nonprofit corporation may at any time amend its articles of incorporation or other instrument governing the corporation, by any amendment process open to it under the laws of this state, to provide that some or all provisions of (a) and (b) of this section do not apply to the corporation. A nonprofit corporation formed after August 23, 1971 may provide in its articles of incorporation that some or all provisions of (a) and (b) of this section do not apply to the corporation.

(d) In this section, references to provisions of the Internal Revenue Code of 1954 include future amendments to those provisions.

**Sec. 10.20.156. Filing of articles of incorporation.** (a) Duplicate originals of the articles of incorporation shall be delivered to the commissioner. Upon finding that the articles of incorporation conform to law, the commissioner shall, when all fees prescribed by this chapter have been paid,

(1) endorse on each duplicate original the word "filed," and the date of the filing;

(2) file one duplicate original in the commissioner's office;

(3) issue a certificate of incorporation and affix the other duplicate original to it.

(b) The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed by the commissioner, shall be returned to the incorporators or their representative.

**Sec. 10.20.161. Effect of issuance of certificate of incorporation.** Upon the issuance of the certificate of incorporation, the corporate existence begins. The certificate of incorporation is conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated. The issuance of the certificate does not affect the right of the state to bring a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

**Sec. 10.20.166. Organizational meeting of directors; first meeting of members.** (a) After the issuance of the certificate of incorporation, an organizational meeting of the board of directors named in the articles of incorporation shall be held at a designated place, by remote communication, or at a designated place and by remote communication at the call of a majority of the incorporators, for the purpose of adopting bylaws, electing officers, and the transaction of other business as may come before the meeting. The designated place may be inside or outside the state. The incorporators calling the meeting shall give at least three days' notice of the meeting by mail to each director named, and the notice must state the time and place of the meeting.

(b) A first meeting of the members may be held at the call of a majority of the directors for purposes stated in the notice of the meeting.

### **ARTICLE 3. AMENDMENT**

#### **Section**

**171. Right to amend articles of incorporation**

**176. Procedure to amend articles of incorporation**

**181. Articles of amendment**

**186. Filing of articles of amendment**

**191. Effect of certificate of amendment**

**196. Restated articles of incorporation**

**201. Execution of restated articles of incorporation**

**206. Contents of restated articles of incorporation**

**211. Filing of restated articles of incorporation with commissioner**

**Sec. 10.20.171. Right to amend articles of incorporation.** A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation, as amended, contain only those provisions which might lawfully be contained in original articles of incorporation at the time the amendment is made.

**Sec. 10.20.176. Procedure to amend articles of incorporation.** (a) Amendments to the articles of incorporation shall be made in the manner set out in this section.

(b) If there are members entitled to vote, the board of directors shall adopt a resolution setting out the proposed amendment and directing that it be submitted to a vote at a meeting of members entitled to vote, which may be either an annual or a special meeting. Written notice setting out the proposed amendment or a summary of the changes shall be given to each member entitled to vote within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast.

(c) If there are no members, or no members entitled to vote, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(d) Any number of amendments may be submitted and voted upon at any one meeting.

**Sec. 10.20.181. Articles of amendment.** The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president, and its secretary or an assistant secretary, and must set out

(1) the name of the corporation;

(2) the amendment adopted;

(3) if there are members entitled to vote on the amendment,

(A) a statement setting out the date of the meeting of members at which the amendment was adopted, that a quorum was present at the meeting, and that the amendment received at least two-thirds of the votes which members present at the meeting or represented by proxy were entitled to cast, or

(B) a statement that the amendment was adopted by a consent in writing signed by all members entitled to vote with respect to the amendment;

(4) if there are no members, or no members entitled to vote, a statement of that fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that the amendment received the vote of a majority of the directors in office.

**Sec. 10.20.186. Filing of articles of amendment.** (a) Duplicate originals of the articles of amendment shall be delivered to the commissioner. Upon finding that the articles of amendment conform to law, the commissioner shall, when all fees prescribed in this chapter have been paid,

(1) endorse on each duplicate original the word "filed," and the date of the filing;

(2) file one duplicate original in the commissioner's office;

(3) issue a certificate of amendment and affix the other duplicate original to it.

(b) The certificate of amendment, together with the duplicate original of the articles of amendment affixed by the commissioner, shall be returned to the corporation or its representative.

**Sec. 10.20.191. Effect of certificate of amendment.** (a) Upon the issuance of the certificate of amendment by the commissioner, the amendment becomes effective and the articles of incorporation are considered amended accordingly.

(b) An amendment does not affect an existing cause of action in favor of or against the corporation, or a pending suit to which the corporation is a party, or the existing rights of persons other than members. In the event the corporate name is changed by amendment, a suit brought by or against the corporation under its former name does not abate for that reason.

**Sec. 10.20.196. Restated articles of incorporation.** (a) A domestic corporation may at any time restate its articles of incorporation as theretofore amended in the manner set out in this section.

(b) If there are members entitled to vote, the board of directors shall adopt a resolution setting out the proposed restated articles of incorporation and directing that they be submitted to a vote at a meeting of members entitled to vote, which may be either an annual or a special meeting.

(c) Written notice setting out the proposed restated articles or a summary of the provisions shall be given to each member entitled to vote within the time and in the manner provided in this chapter for giving notice of meetings to members. If the meeting is an annual meeting, the proposed restated articles or a summary of the provisions may be included in the notice of the annual meeting.

(d) At the meeting a vote of the members entitled to vote shall be taken on the proposed restated articles. The restated articles shall be adopted upon receiving the affirmative vote of a majority of the members entitled to vote who are present at the meeting or represented by proxy.

(e) If there are no members, or no members entitled to vote, the proposed restated articles shall be adopted at a meeting of the board of directors upon receiving the affirmative vote of a majority of the directors in office.

**Sec. 10.20.201. Execution of restated articles of incorporation.** Upon approval, the restated articles of incorporation shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or assistant secretary.

**Sec. 10.20.206. Contents of restated articles of incorporation.** The restated articles of incorporation must set out

- (1) the name of the corporation;
- (2) the period of its duration;
- (3) the purpose or purposes which the corporation is authorized to pursue;
- (4) other provisions, not inconsistent with law, which are set out in the articles of incorporation as amended, except that it is not necessary to set out in the restated articles of incorporation the registered office of the corporation, its registered agent, its directors or its incorporators;
- (5) a statement that the restated articles of incorporation correctly set out the provisions of the articles of incorporation as amended, and that they have been adopted as required by law and that they supersede the original articles of incorporation and all amendments.

**Sec. 10.20.211. Filing of restated articles of incorporation with commissioner.** (a) Duplicate originals of the restated articles of incorporation shall be delivered to the commissioner. Upon finding that the restated articles of incorporation conform to law, the commissioner shall, when all fees prescribed in this chapter have been paid,

- (1) endorse on each duplicate original the word "filed," and the date of the filing;
- (2) file one duplicate original in the commissioner's office;
- (3) issue a restated certificate of incorporation and affix the other duplicate original to it.

(b) The restated certificate of incorporation, together with the duplicate original of the restated articles of incorporation affixed by the commissioner, shall be returned to the corporation or its representative.

#### **ARTICLE 4. MERGER, CONSOLIDATION, AND DISPOSITION OF ASSETS**

##### **Section**

- 216. Merger**
- 221. Procedure for merger**
- 226. Consolidation**
- 231. Procedure for consolidation**
- 236. Adoption of plan of merger or consolidation**
- 241. Abandonment of plan of merger or consolidation**
- 246. Execution of articles of merger or consolidation**
- 251. Contents of articles of merger or consolidation**
- 256. Filing of articles of merger or consolidation with commissioner**
- 261. Effective date and effect of merger or consolidation**
- 266. Merger or consolidation of domestic and foreign corporations**
- 271. Law applicable when domestic and foreign corporations merge or consolidate**
- 275. Effect of merger or consolidation of foreign and domestic corporations**
- 280. Sale, lease, exchange, mortgage, or other disposition of assets**
- 285. Other transactions**

**Sec. 10.20.216. Merger.** Two or more domestic nonprofit corporations may merge into one of the two or more corporations under a plan of merger approved in the manner provided in this chapter.

**Sec. 10.20.221. Procedure for merger.** The board of directors of each corporation shall, by resolution, approve a plan of merger setting out

- (1) the names of the corporations proposing to merge and the name of the corporation into which they propose to merge, which is hereafter referred to as the surviving corporation;
- (2) the terms and conditions of the proposed merger;
- (3) a statement of changes in the articles of incorporation of the surviving corporation caused by the merger;
- (4) other provisions with respect to the merger considered necessary or desirable.

**Sec. 10.20.226. Consolidation.** Two or more domestic corporations may consolidate into a new corporation under a plan of consolidation approved in the manner provided in this chapter.

**Sec. 10.20.231. Procedure for consolidation.** The board of directors of each corporation shall, by a resolution, approve a plan of consolidation setting out

- (1) the names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereafter referred to as the new corporation;
- (2) the terms and conditions of the proposed consolidation;
- (3) all of the statements with respect to the new corporation required to be set out in articles of incorporation for corporations organized under this chapter;
- (4) other provisions with respect to the consolidation considered necessary or desirable.

**Sec. 10.20.236. Adoption of plan of merger or consolidation.** (a) A plan of merger or consolidation shall be adopted in the manner set out in this section.

(b) If the members of a merging or consolidating corporation are entitled to vote, the board of directors of the corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members entitled to vote, which may be either an annual or a special meeting. Written notice setting forth the proposed plan or a summary shall be given to each member entitled to vote at the meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast.

(c) If a merging or consolidating corporation has no members, or no members entitled to vote, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of the corporation upon receiving the vote of a majority of the directors in office.

**Sec. 10.20.241. Abandonment of plan of merger or consolidation.** After approval by a vote of the members, or in the case of a corporation with no members or no members entitled to vote, after approval by its board of directors, of each corporation, and before the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned under provisions, if any, set out in the plan of merger or consolidation.

**Sec. 10.20.246. Execution of articles of merger or consolidation.** Upon approval of the plan of merger or consolidation, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice-president and its secretary or an assistant secretary.

**Sec. 10.20.251. Contents of articles of merger or consolidation.** The articles of merger or consolidation must set out

- (1) the plan of merger or the plan of consolidation;
- (2) if the members of any merging or consolidating corporation are entitled to vote, as to each such corporation
  - (A) a statement setting out the date of the meeting of members at which the plan was adopted, that a quorum was present at the meeting, and that the plan received at least two-thirds of the votes which members present at the meeting or represented by proxy were entitled to cast, or
  - (B) a statement that the plan was adopted by a consent in writing signed by all members entitled to vote;
- (3) if a merging or consolidating corporation has no members, or no members entitled to vote, as to each corporation a statement of this fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that the plan received the vote of a majority of the directors in office.

**Sec. 10.20.256. Filing of articles of merger or consolidation with commissioner.** (a) Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the commissioner. Upon finding that the articles conform to law, the commissioner shall, when all fees prescribed in this chapter have been paid,

- (1) endorse on each duplicate original the word "filed," and the date of the filing;
  - (2) file one duplicate original in the commissioner's office;
  - (3) issue a certificate of merger or a certificate of consolidation and affix the other duplicate original to it.
- (b) The certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed shall be returned to the surviving or new corporation or its representative.

**Sec. 10.20.261. Effective date and effect of merger or consolidation.** (a) Upon the issuance of the certificate of merger or the certificate of consolidation, the merger or consolidation becomes effective.

- (b) Merger or consolidation has the following effect:

(1) the merging or consolidating corporations are a single corporation, which, in the case of a merger, is the corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, is the new corporation provided for in the plan of consolidation;

(2) the separate existence of the corporations, except the surviving or new corporation, ceases;

(3) the surviving or new corporation has the rights, privileges, immunities and powers and is subject to the duties and liabilities of a corporation organized under this chapter;

(4) the surviving or new corporation possesses the rights, privileges, immunities and franchises, public and private, of the merging or consolidating corporations; all real, personal and mixed property, and all debts due, including subscriptions to shares, and all other choses in action, and every other interest of or belonging to or due to each of the corporations are transferred to and vested in the surviving or new corporation; the title to real estate, or interest in real estate, vested in the corporations does not revert nor is it in any way impaired because of the merger or consolidation;

(5) the surviving or new corporation is liable for the liabilities and obligations of each of the corporations merged or consolidated; a claim existing or action or proceeding pending by or against the corporations may be prosecuted as if the merger or consolidation had not taken place, or the surviving or new corporation may be substituted in its place; neither the rights of creditors nor liens upon the property of a merging or consolidating corporation are impaired by the merger or consolidation;

(6) in the case of a merger, the articles of incorporation of the surviving corporation are amended to the extent that changes in its articles of incorporation are stated in the plan of merger; in the case of a consolidation, the statements set out in the articles of consolidation which are required or permitted to be set out in the articles of incorporation of corporations organized under this chapter are the original articles of incorporation of the new corporation.

**Sec. 10.20.266. Merger or consolidation of domestic and foreign corporations.** One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the manner provided in AS 10.20.271 and 10.20.275 if the merger or consolidation is permitted by the laws of the state under which each foreign corporation is organized.

**Sec. 10.20.271. Law applicable when domestic and foreign corporations merge or consolidate.** (a) Each domestic corporation shall comply with the provisions of this chapter 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 state under which it is organized.

(b) If the surviving or new corporation is to be governed by the laws of a state other than this state, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to transact business in this state and in every case it shall file with the commissioner

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

(2) an irrevocable appointment of the commissioner as its agent to accept service of process in these proceedings.

**Sec. 10.20.275. Effect of merger or consolidation of foreign and domestic corporations.** If the surviving or new corporation is to be governed by the law of this state, the effect of the merger or consolidation is the same as the merger or consolidation of domestic corporations. If the surviving or new corporation is to be governed by the laws of another state, the effect of the merger or consolidation is the same as the merger or consolidation of domestic corporations except insofar as the laws of the other state provide otherwise.

**Sec. 10.20.280. Sale, lease, exchange, mortgage, or other disposition of assets.** (a) A sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the manner set out in this section.

(b) If there are members entitled to vote, the board of directors shall adopt a resolution recommending the sale, lease, exchange, mortgage, pledge, or other disposition and directing that it be submitted to a vote at a meeting of members entitled to vote, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, mortgage, pledge, or other disposition of all or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at the meeting, within the time and in the manner provided by this chapter for the giving of notice of meetings of members. At the meeting the members may authorize the sale, lease, exchange, mortgage, pledge, or other disposition and may fix, or may authorize the board of directors to fix the terms and conditions thereof and the consideration to be received by the corporation therefor. This authorization shall require at least two-thirds of the

votes which members present at the meeting or represented by proxy are entitled to cast. After authorization by a vote of members, the board of directors may abandon the sale, lease, exchange, mortgage, pledge, or other disposition of assets, subject to the rights of third parties under related contracts, without further action or approval by members.

(c) If there are no members, or no members entitled to vote, a sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office.

**Sec. 10.20.285. Other transactions.** Under AS 10.55 (Alaska Entity Transactions Act), a corporation may enter into mergers, interest exchanges, conversions, and domestications that are not covered by AS 10.20.216 - 10.20.280.

## **ARTICLE 5. DISSOLUTION**

### **Section**

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- 295. Distribution of assets**
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**Sec. 10.20.290. Voluntary dissolution.** (a) A corporation may dissolve and wind up its affairs in the manner set out in (b) and (c) of this section.

(b) If there are members entitled to vote, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of the dissolution be submitted to a vote at a meeting of members entitled to vote, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at the meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast.

(c) If there are no members, or no members entitled to vote, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

(d) Upon the adoption of a resolution by the members, or by the board of directors if there are no members or no members entitled to vote, the corporation shall cease to conduct its affairs except as may be necessary to wind them up, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this chapter.

(e) Following the adoption of a resolution to dissolve, a copy of it executed by the corporation's president or vice-president and a secretary or assistant secretary shall be immediately filed with the commissioner. The resolution must state the number of members and the number of directors voting for and against it.

(f) A corporation, which has filed a resolution of voluntary dissolution, which has not concluded its affairs and received a certificate of dissolution, within two years after the date of filing the resolution, shall be involuntarily dissolved by the commissioner.

**Sec. 10.20.295. Distribution of assets.** The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(1) all liabilities and obligations of the corporation shall be paid and discharged, or adequate provision shall be made therefor;

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

(3) 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 a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, under a plan of distribution adopted as provided in this chapter;

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

(5) any remaining assets may be distributed to persons, societies, organizations or domestic or foreign corporations, whether for profit or nonprofit, as may be specified in a plan of distribution adopted as provided in this chapter.

**Sec. 10.20.300. Plan of distribution.** (a) A plan providing for the distribution of assets, not inconsistent with the provisions of this chapter, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing a transfer or conveyance of assets for which this chapter requires a plan of distribution, in the manner set out in this section.

(b) If there are members entitled to vote, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission to a vote at a meeting of members entitled to vote, which may be either an annual or a special meeting. Written notice setting out the proposed plan of distribution or a summary shall be given to each member entitled to vote at the meeting, within the time and in the manner provided in this chapter for giving notice of meetings of members. The plan of distribution shall be adopted upon receiving at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast.

(c) If there are no members, or no members entitled to vote, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving a vote of a majority of the directors in office.

(d) A plan of distribution shall be immediately filed with the commissioner. The plan of distribution must state the number of members and the number of directors voting for and against it.

**Sec. 10.20.305. Revocation of voluntary dissolution proceedings.** (a) A corporation may, at any time before the issuance of a certificate of dissolution by the commissioner, revoke the action taken to dissolve the corporation, in the manner set out in this section.

(b) If there are members entitled to vote, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of revocation be submitted to a vote at a meeting of members entitled to vote, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at the meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast.

(c) If there are no members, or no members entitled to vote, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(d) Upon the adoption of the resolution by the members, or by the board of directors where there are no members or no members entitled to vote on it, the corporation may again conduct its affairs.

(e) Upon the adoption of the resolution, a copy shall immediately be filed with the commissioner. The resolution must state the number of members and the number of directors voting for and against it.

**Sec. 10.20.310. Articles of dissolution.** If voluntary dissolution proceedings have not been revoked, then, after all debts, liabilities, and obligations of the corporation have been paid and discharged, or adequate provision made for payment, and all of the remaining property and assets of the corporation transferred, conveyed, or distributed in accordance with the provisions of this chapter, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice-president and its secretary or an assistant secretary. The articles of dissolution must set out

- (1) the name of the corporation;
- (2) if there are members entitled to vote,

(A) a statement setting out the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at the meeting, and that the resolution received at least two-thirds of the votes that members present at the meeting or represented by proxy were entitled to cast; or

(B) a statement that the resolution was adopted by a consent in writing signed by all members entitled to vote;

(3) if there are no members, or no members entitled to vote, a statement of the fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted, and a statement of the fact that the resolution received the vote of a majority of the directors in office;

(4) that all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made for the payment;

(5) a copy of the plan of distribution, if any, as adopted by the corporation, or a statement that no plan was adopted;

(6) that all the remaining property and assets of the corporation have been transferred, conveyed, or distributed in accordance with the provisions of this chapter;

(7) that there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of a judgment, order, or decree that may be entered against it in a pending suit.

**Sec. 10.20.315. Filing of articles of dissolution.** (a) Duplicate originals of the articles of dissolution shall be delivered to the commissioner. Upon finding that the articles of dissolution conform to law, the commissioner shall, when all fees prescribed by this chapter have been paid:

- (1) endorse on each of the duplicate originals the word "filed," and the date of the filing;
- (2) file one of the duplicate originals in the commissioner's office;
- (3) issue a certificate of dissolution and affix the other duplicate original to it.

(b) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed shall be returned to the representative of the dissolved corporation.

**Sec. 10.20.320. Effect of certificate of dissolution.** Upon the issuance of the certificate of dissolution the existence of the corporation ceases, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in this chapter.

**Sec. 10.20.325. Grounds for involuntary dissolution.** A corporation may be dissolved involuntarily by the commissioner when it is established that

- (1) the corporation has failed to file its biennial report within the time required by this chapter;
- (2) the corporation procured its articles of incorporation through fraud;
- (3) the corporation has continued to exceed or abuse the authority conferred upon it by law;
- (4) the corporation has failed for 30 days to appoint and maintain a registered agent in the state;
- (5) the corporation has failed for 30 days after change of its registered office or registered agent to file in the office of the commissioner a statement of the change;
- (6) the corporation has failed, within the time required by this chapter, to revoke or complete a plan of voluntary dissolution; or
- (7) the corporation is 90 days delinquent in filing a notice of change of an officer or director as required by this chapter.

**Sec. 10.20.330. Notification to attorney general.** *[Repealed, Sec. 35 ch 170 SLA 1976.]*

**Sec. 10.20.335. Notice to corporation.** When the commissioner determines that a corporation has given any cause for involuntary dissolution, the commissioner shall mail to the corporation a notice, setting out the grounds for involuntary dissolution, 60 days before a certificate of dissolution is issued. The commissioner shall mail the notice and any subsequent certificate of dissolution in the same manner as required for notices and certificates of involuntary dissolution under AS 10.06.633(i).

**Sec. 10.20.340. Action for involuntary dissolution.** *[Repealed, Sec. 37 ch 170 SLA 1976.]*

**Sec. 10.20.345. Removal of ground for dissolution.** If the corporation, within the time required by this chapter, files its biennial report or appoints or maintains a registered agent as provided in this chapter, or files with the commissioner the required statement of change of registered office or registered agent, or revokes or concludes a plan of voluntary dissolution, the commissioner's authority to involuntarily dissolve the corporation ceases.

**Sec. 10.20.350. Jurisdiction and process.** *[Repealed, Sec. 39 ch 170 SLA 1976.]*

**Sec. 10.20.355. Jurisdiction of court to liquidate assets and business of corporation.** The superior court may liquidate the assets and business of a corporation in the cases provided in AS 10.20.360 - 10.20.370.

**Sec. 10.20.360. Action by members for liquidation.** In an action by a member, the superior court may liquidate the assets and business of a corporation when it is established that

- (1) the directors are deadlocked in the management of the corporate affairs, the members are unable to break the deadlock, and irreparable injury to the corporation is being suffered or is threatened by reason of the deadlock;
- (2) the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent;
- (3) the members are deadlocked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or
- (4) the corporate assets are being misapplied or wasted.

**Sec. 10.20.365. Action by creditor for liquidation.** (a) In an action by a creditor, the superior court may liquidate the assets and business of a corporation when

- (1) the claim of the creditor has been reduced to judgment and an execution on the judgment has been returned unsatisfied and it is established that the corporation is insolvent; or
- (2) the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(b) In this section "insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.

**Sec. 10.20.370. Liquidation on application by corporation.** Upon application by a corporation that has filed a statement of intent to dissolve, as provided in this chapter, to have its liquidation continued under the supervision of the court, the superior court may liquidate the assets and affairs of the corporation.

**Sec. 10.20.375. Liquidation in action by attorney general for dissolution.** *[Repealed, Sec. 41 ch 170 SLA 1976.]*

**Sec. 10.20.380. Joinder of members not mandatory.** It is not necessary to make members parties to an action or proceeding for liquidation of the assets of a corporation unless relief is sought against them personally.

**Sec. 10.20.385. Procedure in liquidation of corporation by court.** In a proceeding to liquidate the assets and business of a corporation the superior court may issue injunctions, appoint a receiver pendente lite with powers and duties as the court may direct, and take other proceedings necessary to preserve the corporate assets wherever situated and carry on the business of the corporation until a full hearing is had.

**Sec. 10.20.390. Appointment of receiver.** After a hearing held upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver with authority to collect the assets of the corporation, including amounts owing to the corporation by members. The liquidating receiver may, subject to the order of the court, sell, convey, and dispose of all or a part of the assets of the corporation wherever situated, either at public or private sale.

**Sec. 10.20.395. Disposition of assets or proceeds.** The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition of the assets shall be applied and distributed as follows:

- (1) all costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made for payment;
- (2) assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with these requirements;
- (3) 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 a condition requiring return,

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

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

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

**Sec. 10.20.400. Powers and duties of receiver.** The order appointing the liquidating receiver shall state the receiver's powers and duties. The powers and duties may be increased or diminished at any time during the liquidation proceedings.

**Sec. 10.20.405. Compensation of receiver and attorneys.** The court may allow from time to time, as expenses of the liquidation, compensation to the receiver and to attorneys in the proceeding, and direct the payment of compensation out of the assets of the corporation or the proceeds of a sale or disposition of assets.

**Sec. 10.20.410. Power of receiver to sue and defend.** A receiver of a corporation appointed under this chapter may sue and defend in all courts in the receiver's own name as receiver of the corporation.

**Sec. 10.20.415. Appointing court has exclusive jurisdiction.** The court appointing the receiver has exclusive jurisdiction of the corporation and its property, wherever situated.

**Sec. 10.20.420. Qualifications of receivers.** A receiver shall be a citizen of the United States or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in the state. A receiver shall give the bond the court directs with sureties the court requires.

**Sec. 10.20.425. Filing of claims in liquidation proceedings.** (a) In a proceeding to liquidate the assets and business of a corporation the court may require creditors of the corporation to file with the clerk of the court or with the receiver, in the form the court prescribes, proof under oath of their respective claims.

(b) If the court requires the filing of claims it shall fix a date, not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice to be given to creditors and claimants of the date fixed. Before the date fixed, the court may extend the time of the filing of claims.

(c) A creditor who fails to file proof of a claim on or before the date fixed may be barred by order of the court from participating in the distribution of the assets of the corporation.

**Sec. 10.20.430. Discontinuance of liquidation proceedings.** The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceeding when it is established that cause for liquidation no longer exists. In this event, the court shall dismiss the proceeding and direct the receiver to redeliver to the corporation its remaining property and assets.

**Sec. 10.20.435. Decree of involuntary dissolution.** In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of the proceeding and the debts, obligations and liabilities of the corporation have been paid and discharged or when the remaining property and assets are not sufficient to satisfy and discharge the costs, expenses, debts and obligations, and all the property and assets have been applied to their payment, the court shall enter a decree dissolving the corporation. Upon entry of the decree, the existence of the corporation ceases.

**Sec. 10.20.440. Filing of decree of dissolution.** If the court enters a decree dissolving a corporation, the clerk of the court shall file a certified copy of the decree with the commissioner. A fee may not be charged for this filing.

**Sec. 10.20.445. Deposit with commissioner of amount due creditors.** Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or member who is unknown or cannot be found, or who is under disability and there is no legally competent person to receive the distributive portion, shall be reduced to cash and deposited with the commissioner and shall be paid over to the creditor or member or the legal representative of the creditor or member upon proof satisfactory to the commissioner of a right to it.

**Sec. 10.20.450. Survival of remedy after dissolution.** The dissolution of a corporation either by (1) the issuance of a certificate of dissolution by the commissioner, or (2) a decree of the court when the court has not liquidated the assets and business of the corporation as provided in this chapter, or (3) by expiration of its period of duration, does not take away or impair a remedy available to or against the corporation, its directors, officers, or members, for a right or claim existing, or a liability incurred, before dissolution if an action or other proceeding is commenced within two years after the date of dissolution. The action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors, and officers may take appropriate action to protect the remedy, right, or claim. If the corporation was dissolved by the expiration of its period of duration, it may amend its articles of incorporation at any time during the two year period in order to extend its period of duration.

**Sec. 10.20.452. Continued existence for certain purposes.** If a dissolved corporation is the owner of real or personal property, or claims an interest in or lien upon real or personal property, the corporation through its board of directors continues to exist for five years after the date of dissolution for the purpose of conveying, transferring, or releasing the real or personal property or interest in or lien upon the property. In addition, a dissolved corporation through its board of directors continues to exist for the purpose of being made a party in an action or proceeding arising before dissolution and involving the title to real or personal property or an interest in it. The action or proceeding may be instituted and maintained in the same manner as before the dissolution of the corporation. This section does not affect or suspend a statute of limitations applicable to a claim. For the purpose of service of process, notice, or demand within the prescribed time following dissolution, the commissioner is an agent of the dissolved corporation upon whom service may be made in the manner prescribed in AS 10.06.175(b).

## **ARTICLE 6. FOREIGN CORPORATIONS**

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- 610. Transacting business without certificate of authority not affecting contracts, acts, and right to defend**

## **615. Liability to state for transacting business without certificate of authority**

**Sec. 10.20.455. Admission of foreign corporation.** A foreign nonprofit corporation may not transact business in the state until it has procured a certificate of authority from the commissioner. A foreign corporation may not procure a certificate of authority to transact business in the state which a corporation organized under this chapter is not permitted to transact. A foreign corporation may not be denied a certificate of authority because the laws of the state or country under which it is organized governing its organization and internal affairs differ from the laws of the state. Nothing in this chapter authorizes the state to regulate the organization or the internal affairs of a foreign corporation.

**Sec. 10.20.460. Activities not constituting transacting business in the state.** Without excluding other activities which may not constitute transacting business in the state, a foreign corporation does not transact business in the state by carrying on any of the following activities:

- (1) maintaining or defending any action or suit or an administrative or arbitration proceeding, or effecting its settlement or the settlement of claims or disputes;
- (2) holding meetings of its directors, shareholders, or members or carrying on other activities concerning its internal affairs;
- (3) maintaining bank accounts;
- (4) securing or collecting debts, or enforcing rights in property securing debts;
- (5) transacting business in interstate commerce;
- (6) granting funds;
- (7) distributing information to members;
- (8) conducting an isolated transaction completed within a period of 30 days not in the course of a number of repeated transactions of like nature.

**Sec. 10.20.465. Powers of a foreign corporation.** A foreign corporation that has received a certificate of authority enjoys the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set out in the application under which the certificate of authority is issued and, except as otherwise provided in this chapter, is subject to the duties, restrictions, penalties, and liabilities imposed upon a domestic corporation of like character.

**Sec. 10.20.470. Corporate name of foreign corporation.** A certificate of authority may not be issued to a foreign corporation unless the corporate name of the corporation

- (1) does not contain a word or phrase that indicates or implies that it is organized for any purpose other than the purpose contained in its articles of incorporation;
- (2) is available for use by the foreign corporation under AS 10.20.021(b).

**Sec. 10.20.471. Assumed corporate name.** When a foreign corporation, applying for a certificate of authority, has a name that is not available for use by the foreign corporation under AS 10.20.021(b), it shall

- (1) select a name under which it elects to do business in the state;
- (2) clearly identify on all advertising, contracts, and other legal documents its true corporate name as well as its assumed name.

**Sec. 10.20.475. Change of name by foreign corporation.** When a foreign corporation authorized to transact business in the state changes its name to one under which a certificate of authority would not be granted to it, the certificate of authority of the corporation is suspended and it may not transact business in the state until it has changed its name to a name available to it under the laws of the state.

**Sec. 10.20.480. Application for certificate of authority.** To procure a certificate of authority to transact business in the state, a foreign corporation shall file an application in duplicate with the commissioner.

**Sec. 10.20.485. Contents of application.** The application must set out

- (1) the name of the corporation and the state or country under the laws of which it is incorporated;
- (2) the date of incorporation and the period of duration of the corporation;
- (3) the address of the principal office of the corporation in the state or country under the laws of which it is incorporated;
- (4) the address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent in this state at that address;
- (5) the purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in the state;
- (6) the names and addresses of the directors and officers of the corporation;

(7) additional information which may be necessary or appropriate in order to enable the commissioner to determine whether the corporation is entitled to a certificate of authority to conduct affairs in the state;

(8) the name and address of a person owning at least five percent of the shares, or five percent of any class of shares, and the percentage of the shares or class of shares owned by that person.

**Sec. 10.20.490. Form and execution of application.** The application must be on forms prescribed and furnished by the commissioner and shall be executed in duplicate by the corporation by its president or vice-president and by its secretary or an assistant secretary.

**Sec. 10.20.495. Filing of application for certificate of authority.** (a) Upon finding that the application conforms to law, the commissioner shall, when all fees prescribed in this chapter have been paid

(1) endorse on each document the word "filed," and the date of the filing;

(2) file one duplicate original of the application in the commissioner's office;

(3) issue a certificate of authority to transact business in the state and affix the other duplicate original application to it.

(b) The certificate of authority, together with the duplicate original of the application affixed to it by the commissioner, shall be returned to the corporation or its representative.

**Sec. 10.20.500. Effect of certificate of authority.** Upon the issuance of a certificate of authority by the commissioner, the corporation may transact business in the state for the purpose set out in its application, subject, however, to the right of the state to suspend or revoke the authority as provided in this chapter.

**Sec. 10.20.505. Registered office and registered agent of foreign corporation.** Each foreign corporation authorized to transact business in the state shall have and continuously maintain in the state a registered

(1) office which may be, but need not be, the same as its place of business in the state;

(2) agent, who may be either an individual resident in the state whose business office is identical with the registered office or a domestic corporation, or a foreign corporation authorized to transact business in the state, which has a business office identical with the registered office.

**Sec. 10.20.510. List of foreign corporations and registered offices and agents.** The commissioner shall provide each clerk of the superior court with a current list of the names of all foreign corporations, the address of their registered office, and the name and address of their registered agent. The commissioner shall provide a supplement to the list indicating additions, deletions and changes at least every six months. The list shall be made available to the public by the commissioner for a fee prescribed by the commissioner.

**Sec. 10.20.515. Change of registered office or registered agent of foreign corporation.** A foreign corporation authorized to transact business in the state may change its registered office or change its registered agent, or both, upon filing with the department a statement setting out

(1) the name of the corporation;

(2) the address of its registered office;

(3) if the address of its registered office is to be changed, the address of the proposed office;

(4) the name of its registered agent;

(5) if its registered agent is to be changed, the name of its successor registered agent;

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

(7) that the change is authorized by resolution adopted by the board of directors.

**Sec. 10.20.520. Execution, filing, and effective date of statement.** The statement shall be executed by the corporation by its president or a vice-president and delivered to the commissioner. Upon finding that the statement conforms to the provisions of this chapter, the commissioner shall file the statement in the commissioner's office, and, upon filing the statement, the change of address of the registered office, or the change of registered agent, or both, becomes effective.

**Sec. 10.20.525. Service of process on foreign corporation.** The registered agent appointed by a foreign corporation authorized to transact business in the state shall be an agent of the corporation upon whom process, notice, or demand required or permitted by law to be served upon the corporation may be served.

**Sec. 10.20.530. Service on commissioner.** When a foreign corporation authorized to transact business in the state, or not authorized to transact business in the state but doing so, fails to appoint or maintain a registered agent in the state, or when a registered agent cannot with reasonable diligence be found at the registered office, or when the

certificate of authority of a foreign corporation is suspended or revoked, the commissioner is an agent upon whom process, notice, or demand may be served. Service on the commissioner shall be made by delivering to and leaving with the commissioner, or the commissioner's designee, duplicate copies of the process, notice, or demand, accompanied by a fee established by the department by regulation. The commissioner shall immediately have one copy forwarded by registered or certified mail, addressed to the corporation at its principal office in the state or country under whose laws it is incorporated. Service on the commissioner is returnable in not less than 30 days.

**Sec. 10.20.535. Records of commissioner.** The commissioner shall keep a record of all processes, notices, or demands served under AS 10.20.525 and 10.20.530, and shall record the time of service and the commissioner's action with reference to the service.

**Sec. 10.20.540. Procedure not exclusive.** Nothing in AS 10.20.525 - 10.20.535 limits or affects the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner.

**Sec. 10.20.545. Amendment to articles of incorporation of foreign corporation.** When the articles of incorporation of a foreign corporation authorized to transact business in the state are amended, the foreign corporation shall, within 30 days after the amendment becomes effective, file with the department a copy of the amendment authenticated by the proper officer of the state or country under whose laws it is incorporated. The filing of the amendment does not enlarge or alter the purpose which the corporation may pursue in the transaction of business in the state, nor authorize the corporation to transact business in the state under a name other than the name set out in its certificate of authority.

**Sec. 10.20.550. Merger of foreign corporation authorized to transact business in the state.** When a foreign corporation authorized to transact business in the state is a party to a statutory merger permitted by the laws of the state or country where it is incorporated, and the corporation is the surviving corporation, it shall, within 30 days after the merger becomes effective, file with the commissioner a copy of the articles of merger authenticated by the proper office of the state or country under whose laws the statutory merger was carried out. It is not necessary for the corporation to procure either a new or amended certificate of authority to transact business in the state unless the name of the corporation is changed or unless the corporation desires to pursue in the state other or additional purposes than those which it is authorized to conduct in the state.

**Sec. 10.20.555. Amended certificate of authority.** A foreign corporation authorized to transact business in the state shall procure an amended certificate of authority if it changes its corporate name, or desires to pursue in the state other or additional purposes than those set out in its earlier application for a certificate of authority, by making application to the commissioner.

**Sec. 10.20.560. Withdrawal of foreign corporation.** A foreign corporation authorized to transact business in the state may withdraw from the state upon procuring from the commissioner a certificate of withdrawal. To procure a certificate of withdrawal, the foreign corporation shall deliver to the commissioner an application for withdrawal.

**Sec. 10.20.565. Contents of application for withdrawal.** The application for withdrawal must set out

- (1) the name of the corporation and the state or country where it is incorporated;
- (2) that the corporation is not transacting business in the state;
- (3) that the corporation surrenders its authority to transact business in the state;
- (4) that the corporation revokes the authority of its registered agent in the state to accept service of process and consents that service of process in an action, suit or proceeding based upon a cause of action arising in the state during the time the corporation was authorized to transact business in the state may be made on the corporation by service on the commissioner;
- (5) a post office address to which the commissioner may mail a copy of a process against the corporation that may be served on the commissioner;
- (6) additional information necessary or appropriate to enable the commissioner to determine and assess unpaid fees payable as prescribed in this chapter.

**Sec. 10.20.570. Form of application for withdrawal.** The application for withdrawal shall be made on forms prescribed and furnished by the commissioner and shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, or, if the corporation is in the hands of a receiver or trustee, the application shall be executed on behalf of the corporation by the receiver or trustee.

**Sec. 10.20.575. Filing of application for withdrawal.** (a) Duplicate originals of the application for withdrawal shall be delivered to the commissioner. Upon finding that the application conforms to the provisions of this chapter, the commissioner shall, when all fees prescribed in this chapter have been paid,

- (1) endorse on each duplicate original the word "filed," and the date of the filing;
- (2) file one duplicate original in the commissioner's office;
- (3) issue a certificate of withdrawal and affix the other duplicate original to it.

(b) The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed by the commissioner shall be returned to the corporation or its representative.

**Sec. 10.20.580. Effect of certificate of withdrawal.** Upon the issuance of the certificate of withdrawal, the authority of the corporation to transact business in the state ceases.

**Sec. 10.20.585. Grounds for revocation of certificate of authority.** The certificate of authority of a foreign corporation to transact business in the state may be revoked by the commissioner when

- (1) the corporation fails to file its biennial report within the time required by this chapter, or fails to pay fees or penalties prescribed in this chapter when they are due and payable;
- (2) the corporation fails to appoint and maintain a registered agent in this state;
- (3) the corporation fails, after change of its registered office or registered agent, to file with the commissioner a statement of the change as required by this chapter;
- (4) the corporation fails to file with the department an amendment to its articles of incorporation or articles of merger within the time prescribed by this chapter;
- (5) a misrepresentation has been made of a material matter in an application, report, affidavit, or other document submitted under this chapter; or
- (6) the corporation is 90 days delinquent in filing a notice of change of an officer or director as required by this chapter.

**Sec. 10.20.590. Limitations on revocation of certificate of authority.** The commissioner may not revoke a certificate of authority of a foreign corporation unless

- (1) the commissioner has given the corporation at least 60 days' notice by mail addressed to its registered office in the state; and
- (2) the corporation fails, before revocation, to file the biennial report, or pay the fees, or file the required statement of change of registered agent or registered office, or file the articles of amendment or articles of merger, or correct the misrepresentation.

**Sec. 10.20.595. Issuance of certificate of revocation.** Upon revoking a certificate of authority, the commissioner shall

- (1) issue a certificate of revocation in duplicate;
- (2) file one of the certificates in the commissioner's office;
- (3) mail to the corporation at its registered office in the state a notice of the revocation accompanied by one of the certificates.

**Sec. 10.20.600. Effect of certificate of revocation.** Upon the issuance of the certificate of revocation, the authority of the corporation to transact business in the state ceases.

**Sec. 10.20.605. Transacting business without certificate of authority as a bar to right to sue.** A foreign corporation transacting business in the state without a certificate of authority may not maintain an action, suit or proceeding in a court of the state until it obtains a certificate of authority. A successor or assignee of a foreign corporation transacting business without a certificate of authority may not maintain an action, suit or proceeding in a court of the state on a right, claim or demand arising out of the transaction of business by the corporation in the state until a certificate of authority is obtained by the corporation or by a corporation which has acquired all or substantially all of its assets.

**Sec. 10.20.610. Transacting business without certificate of authority not affecting contracts, acts, and right to defend.** The failure of a foreign corporation to obtain a certificate of authority to transact business in the state does not impair the validity of a contract or act of it, and does not prevent the corporation from defending an action, suit or proceeding in a court of the state.

**Sec. 10.20.615. Liability to state for transacting business without certificate of authority.** A foreign corporation which transacts business in the state without a certificate of authority is liable to the state, for the years or portions of years during which it transacted business in the state without a certificate of authority, in an amount

equal to all fees which would have been imposed by this chapter on the corporation if it had applied for and received a certificate of authority to transact business in the state as required by this chapter and filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay the fees and a penalty of up to \$5,000 per year or fraction of a year of operating without a certificate of authority. The attorney general shall bring proceedings to recover amounts due the state under this section.

## ARTICLE 7. BIENNIAL REPORTS AND NOTICES

### Section

**620. Biennial report of domestic and foreign corporations**

**625. Contents of biennial report**

**630. Filing of biennial report of domestic and foreign corporations**

**631. Filing notice of change of officers or directors**

**Sec. 10.20.620. Biennial report of domestic and foreign corporations.** Each domestic corporation and each foreign corporation authorized to transact business in the state shall file a biennial report within the time prescribed by this chapter. The information contained in the biennial report shall be given as of June 30 of the reporting year.

**Sec. 10.20.625. Contents of biennial report.** The biennial report must set out

- (1) the name of the corporation and the state or country where it is incorporated;
- (2) the address of the registered office of the corporation in the state, and the name of its registered agent in the state at that address, and, in the case of a foreign corporation, the address of its principal office in the state or country where it is incorporated;
- (3) a brief statement of the character of the business in which the corporation is engaged in the state;
- (4) the names and addresses of the directors and officers of the corporation;
- (5) the real and personal property assets of the corporation.

**Sec. 10.20.630. Filing of biennial report of domestic and foreign corporations.** (a) The biennial report of a domestic or foreign corporation must be delivered to the commissioner before July 2 of the reporting year. A domestic corporation filing its articles of incorporation and a foreign corporation receiving a certificate of authority during an even-numbered year must file the biennial report before July 2 of each even-numbered year. A corporation filing its articles of incorporation or receiving its certificate of authority during an odd-numbered year must file the biennial report before July 2 of each odd-numbered year. The biennial report is delinquent if not filed before August 1 of each odd or even year as provided in this section. Delinquent returns are subject to the penalty prescribed in AS 10.20.325.

(b) [Repealed, Sec. 48 ch 170 SLA 1976].

(c) Proof to the satisfaction of the commissioner that before August 1 the report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, is compliance with (a) of this section.

(d) Upon finding that the report conforms to the requirements of this chapter, the commissioner shall file it. Upon finding that it does not conform to the requirements of this chapter, the commissioner shall return it promptly to the corporation for necessary corrections. If the report is corrected to conform to the requirements of this chapter and returned to the commissioner in sufficient time to be filed before October 1 of the year in which it is due, the penalties for failure to file the report provided in AS 10.20.645 do not apply.

**Sec. 10.20.631. Filing notice of change of officers or directors.** (a) In the event of a change of an officer or director during the year following the filing of the biennial report, the corporation must file a notice of change amending the report before July 2 of that year.

(b) The notice must be filed in the office of the commissioner and must state the name and current address of a director or officer not stated in the corporation's last filed biennial report, and the name of the person replaced and the office held. The notice must be signed by an officer of the corporation.

## ARTICLE 8. FEES AND CHARGES

### Section

**635. Fees for filing documents and issuing certificates**

**640. Fee for certified copies of instruments**

**Sec. 10.20.635. Fees for filing documents and issuing certificates.** (a) The commissioner shall establish by regulation and charge and collect fees for filing

- (1) articles of incorporation and issuing a certificate of incorporation;
  - (2) articles of amendment and issuing a certificate of amendment;
  - (3) restated articles of incorporation and issuing a restated certificate of incorporation;
  - (4) articles of merger or consolidation and issuing a certificate of merger or consolidation;
  - (5) a statement of change of address of registered office or change of registered agent, or both;
  - (6) articles of dissolution;
  - (7) an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority;
  - (8) an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state and issuing an amended certificate of authority;
  - (9) a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this state;
  - (10) a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this state;
  - (11) an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal;
  - (12) any other statement or report, including a biennial report, of a domestic or foreign corporation.
- (b) The department may by regulation charge each corporation subject to this chapter a fixed fee in place of the various fees specified in this chapter and for routine administrative services rendered to the corporation by the department.

**Sec. 10.20.640. Fee for certified copies of instruments.** The fee for furnishing a certified copy of any instrument shall be established by the department by regulation.

**Sec. 10.20.643. Accounting and disposition of fees.** *[Repealed, Sec. 28 ch 90 SLA 1991.]*

## **ARTICLE 9. PENALTIES**

### **Section**

- 645. Penalties imposed upon corporation**
- 650. Penalties imposed upon officers and directors**

**Sec. 10.20.645. Penalties imposed upon corporation.** (a) A domestic or foreign corporation that fails or refuses to file its biennial report for any required reporting period within the time prescribed by this chapter is subject to a penalty of \$5 to be assessed by the commissioner.

(b) A domestic or foreign corporation that fails or refuses to answer truthfully and fully within the time prescribed by this chapter interrogatories propounded by the commissioner in accordance with the provisions of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$500.

**Sec. 10.20.650. Penalties imposed upon officers and directors.** Each officer and director of a domestic or foreign corporation who fails or refuses within the time prescribed by this chapter to answer truthfully and fully interrogatories propounded by the commissioner in accordance with this chapter, or who signs any articles, statement, report, application, or other document filed with the commissioner that is known to the officer or director to be false in any material respect, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$500.

## **ARTICLE 10. MISCELLANEOUS PROVISIONS**

### **Section**

- 655. Interrogatories by commissioner; certification to attorney general regarding violation**
- 660. Disclosure of interrogatories, answers, and information**
- 665. Notice of and appeal from disapproval of document**
- 670. Appeal from revocation of certificate of authority**
- 673. Cancellation of certificates issued and filings accepted**
- 675. Certificates and certified copies to be received in evidence**

- 680. Use of forms furnished by the commissioner**
- 685. Greater voting or concurrence requirements**
- 690. Waiver of notice**
- 695. Action by members or directors without a meeting**
- 700. Unauthorized assumption of corporate powers**

**Sec. 10.20.655. Interrogatories by commissioner; certification to attorney general regarding violation.** (a) The commissioner may propound to a domestic or foreign corporation and to an officer or director of a domestic or foreign corporation those interrogatories reasonably necessary and proper for ascertaining whether the corporation has complied with the provisions of this chapter.

(b) The interrogatories shall be answered within 30 days after mailing, or within the additional time fixed by the commissioner, and the answers shall be full and complete, in writing and under penalty of unsworn falsification in the second degree under AS 11.56.210. If the interrogatories are directed to an individual, they shall be answered by that individual and, if directed to a corporation, they shall be answered by the president, vice-president, secretary, or assistant secretary of the corporation.

(c) The commissioner need not file the document to which the interrogatories relate until the interrogatories are properly answered and need not then file the document if the answers disclose that the document does not conform to the provisions of this chapter.

(d) The commissioner shall certify to the attorney general, for appropriate action, all interrogatories and answers that disclose a violation of this chapter.

**Sec. 10.20.660. Disclosure of interrogatories, answers, and information.** Interrogatories and answers are not open to public inspection and the commissioner may not disclose facts or information obtained from the interrogatories except as an official duty of the commissioner requires or if the interrogatories or the answers are required for evidence in criminal proceedings or other action by the state.

**Sec. 10.20.665. Notice of and appeal from disapproval of document.** If the commissioner fails to approve articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by this chapter to be approved, the commissioner, within 10 days after delivery of the document to the commissioner, shall give written notice of disapproval to the person or corporation, domestic or foreign, delivering the document, specifying the reasons for disapproval. The person or corporation may appeal from the disapproval to the superior court by filing with the clerk of the court a petition setting out a copy of the document sought to be filed and a copy of the written disapproval. The matter shall be tried de novo by the superior court, which shall either sustain the action of the commissioner or direct the commissioner to take action the court considers proper.

**Sec. 10.20.670. Appeal from revocation of certificate of authority.** If the commissioner revokes the certificate of authority of a foreign corporation to transact business in the state under this chapter, the foreign corporation may appeal to the superior court by filing with the clerk of the court a petition setting out a copy of its certificate of authority and a copy of the notice of revocation given by the commissioner. The matter shall be tried de novo by the superior court, and the court shall either sustain the action of the commissioner or direct the commissioner to take action the court considers proper.

**Sec. 10.20.673. Cancellation of certificates issued and filings accepted.** The provisions in AS 10.06 (Alaska Corporations Code) relating to the cancellation of certain corporate filings apply to nonprofit corporations.

**Sec. 10.20.675. Certificates and certified copies to be received in evidence.** Certificates issued by the commissioner in accordance with this chapter, and copies of documents filed in the commissioner's office in accordance with the provisions of this chapter when certified by the commissioner, are prima facie evidence of the facts stated. A certificate by the commissioner under the seal of the state as to the existence or nonexistence of facts relating to corporations which do not appear from a certified copy of these documents or certificates is prima facie evidence of the existence or nonexistence of the facts stated.

**Sec. 10.20.680. Use of forms furnished by the commissioner.** All reports required by this chapter to be filed with the department or the commissioner shall be on forms prescribed and furnished by the commissioner. Forms for all other documents to be filed in the office of the department or the commissioner shall be furnished by the commissioner on request, but their use, unless required in this chapter, is not mandatory.

**Sec. 10.20.685. Greater voting or concurrence requirements.** When, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation or bylaws require the vote or concurrence of

a greater proportion of the directors or members or any class of members than required by this chapter, the provisions of the articles of incorporation or bylaws control.

**Sec. 10.20.690. Waiver of notice.** When notice is required to be given to a member or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver of the notice in writing signed by the person entitled to notice, whether before or after the time stated for notice, is equivalent to the giving of notice.

**Sec. 10.20.695. Action by members or directors without a meeting.** (a) Action required by this chapter to be taken at a meeting of the members or directors of a corporation, or action that may be taken at a meeting of the members or directors, may be taken without a meeting if a consent in writing, setting out the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter or all of the directors.

(b) The consent has the same effect as a unanimous vote, and may be stated as such in articles or documents filed with the commissioner.

**Sec. 10.20.700. Unauthorized assumption of corporate powers.** Persons who assume to act as a corporation without authority are jointly and severally liable for debts and liabilities incurred or arising as a result of that action.

## ARTICLE 11. GENERAL PROVISIONS

### Section

#### 905. Powers of commissioner

#### 910. Applicability to domestic and foreign corporations

#### 915. Application to foreign and interstate commerce

#### 920. Definitions

#### 925. Short title

**Sec. 10.20.905. Powers of commissioner.** The commissioner has the power and authority reasonably necessary for administering this chapter efficiently and performing the duties imposed by this chapter.

**Sec. 10.20.910. Applicability to domestic and foreign corporations.** (a) The provisions of this chapter relating to domestic corporations apply to all corporations organized under this chapter.

(b) The provisions of this chapter relating to foreign corporations apply to all foreign nonprofit corporations conducting affairs in this state for a purpose or purposes for which a corporation might be organized under this chapter.

**Sec. 10.20.915. Application to foreign and interstate commerce.** This chapter applies to commerce with foreign nations and among the several states only as permitted under the Constitution of the United States.

**Sec. 10.20.920. Definitions.** In this chapter, unless the context otherwise requires,

(1) "articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments to them, including articles of merger;

(2) "board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which the group is designated;

(3) "bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which the rules are designated;

(4) "commissioner" means commissioner of commerce, community, and economic development;

(5) "corporation" or "domestic corporation" means a nonprofit corporation subject to the provisions of this chapter, except a foreign corporation;

(6) "department" means the Department of Commerce, Community, and Economic Development;

(7) "foreign corporation" means a nonprofit corporation organized under laws other than the laws of this state;

(8) "member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws;

(9) "nonprofit corporation" means a corporation no part of the income or profit of which is distributed to its members, directors or officers;

(10) "remote communication" has the meaning given in AS 10.06.990.

**Sec. 10.20.925. Short title.** This chapter may be cited as the Alaska Nonprofit Corporation Act.

**CHAPTER 25.  
ELECTRIC AND TELEPHONE COOPERATIVE ACT**

**Article**

- 1. Substantive Provisions (§§ 10.25.010 – 10.25.235)**
- 2. Merger, Consolidation, and Conversion (§§ 10.25.240 – 10.25.300)**
- 3. Dissolution (§§ 10.25.310 – 10.25.360)**
- 4. Miscellaneous Provisions (§§ 10.25.370 – 10.25.600)**
- 5. General Provisions (§§ 10.25.610 – 10.25.650)**

**ARTICLE 1.  
SUBSTANTIVE PROVISIONS**

**Section**

- 10. Powers of electric or telephone cooperative; prohibited action**
- 20. Powers of electric cooperative**
- 30. Powers of telephone cooperative**
- 40. Name**
- 50. Incorporators**
- 60. Articles of incorporation**
- 70. Bylaws**
- 80. Membership**
- 90. Meetings of members and district delegates**
- 100. Notice of meetings**
- 110. Quorum requirements**
- 120. Voting**
- 125. Record date**
- 130. Waiver of notice**
- 140. Board of directors**
- 145. Liability, indemnification, and insurance**
- 150. Term of office of directors**
- 160. Staggered terms of office for directors**
- 170. Quorum of board**
- 175. Board meetings open; exceptions; remedy**
- 180. General powers of board**
- 190. Districts**
- 200. Officers**
- 210. Amendment of articles of incorporation**
- 220. Contents of articles of amendment**
- 230. Change of location of principal office**
- 235. Member's right to examine books and records**

**Sec. 10.25.010. Powers of electric or telephone cooperative; prohibited action.** (a) Except as provided in (b) of this section, an electric or telephone cooperative may

- (1) sue and be sued in its corporate name;
- (2) have perpetual existence;
- (3) adopt a corporate seal and alter it;
- (4) construct, buy, lease, or otherwise acquire, and equip, maintain, and operate, and sell, assign, convey, lease, mortgage, pledge, or otherwise dispose of or encumber lands, buildings, structures, electric or telephone lines or systems, dams, plants and equipment, and any other real or personal property, tangible or intangible, that is necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;
- (5) buy, lease, or otherwise acquire, and use, and exercise and sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber franchises, rights, privileges, licenses, and easements;
- (6) borrow money and otherwise contract indebtedness, and issue evidences of indebtedness, and secure the payment of the indebtedness by mortgage, pledge, or deed of trust of, or any other encumbrance upon its real or personal property, assets, franchises, or revenues;
- (7) construct, maintain, and operate electric transmission and distribution lines or telephone or related telecommunications service lines along, on, under and across publicly owned lands and public thoroughfares, including, without limitation, all roads, highways, streets, alleys, bridges, and causeways;

- (8) exercise the power of eminent domain;
- (9) become a member of other cooperatives or corporations or own stock in them;
- (10) conduct its business and exercise its powers inside or outside the state;
- (11) adopt, amend, and repeal bylaws;
- (12) make all contracts necessary, convenient, or appropriate for the full exercise of its powers;
- (13) make donations for the public welfare or for charitable, scientific, or educational purposes;
- (14) do and perform any other act and thing, and have and exercise any other power that may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized.

(b) An electric or telephone cooperative may not use cooperative funds to promote or oppose the candidacy of a candidate for director of the cooperative.

**Sec. 10.25.020. Powers of electric cooperative.** An electric cooperative may

(1) generate, manufacture, purchase, acquire, accumulate, and transmit electric energy, and distribute, sell, supply, and dispose of electric energy to its members, to governmental agencies and political subdivisions, and to other persons not exceeding 10 percent of the number of its members; however, a cooperative that acquires existing electric facilities may continue service to persons, not in excess of 40 percent of the number of its members, who are already receiving service from these facilities without requiring them to become members, and these persons may become members upon the terms as may be prescribed in the bylaws;

(2) assist persons to whom electric energy is or will be supplied by the cooperative in wiring their premises and in acquiring and installing electrical and plumbing appliances, equipment, fixtures, and apparatus by financing them, and in connection with these services wire or have wired the premises, and buy, acquire, lease, sell, distribute, install, and repair electric and plumbing appliances, equipment, fixtures, and apparatus;

(3) assist persons to whom electric energy is or will be supplied by the cooperative in constructing, equipping, maintaining, and operating electric cold storage or processing plants by financing them or otherwise;

(4) operate a waste heat distribution system;

(5) operate a heating distribution system that was in existence on June 9, 1988;

(6) provide sewer, water, or gas utility service if the cooperative has received a certificate of convenience and necessity under AS 42.05.221 - 42.05.281 from the former Alaska Public Utilities Commission or the Regulatory Commission of Alaska for each type of service provided;

(7) provide direct satellite television programming services; in this paragraph, "direct satellite television programming services" means a video broadcast signal that is received directly from a satellite by an end user.

**Sec. 10.25.030. Powers of telephone cooperative.** (a) A telephone cooperative may

(1) furnish, improve, and expand telephone or related telecommunications service to its members and to other users not in excess of 10 percent of the number of its members; however, telephone or related telecommunications service may be made available by a cooperative through interconnection of facilities to any number of subscribers of other telephone or related telecommunications systems, and through pay stations to any number of users, and a cooperative that acquires existing telephone facilities or related telecommunications facilities may continue service to persons, not exceeding 40 percent of the number of its members, who are already receiving service from the facilities without requiring them to become members, and these persons may become members on terms as may be prescribed in the bylaws;

(2) connect and interconnect its telephone or related telecommunications service lines, facilities, or systems with other telephone or related telecommunications service lines, facilities, or systems;

(3) make its facilities available to persons furnishing telephone or related telecommunications service inside or outside the state.

(b) *[Repealed, Sec. 22 ch 29 SLA 2020.]*

**Sec. 10.25.040. Name.** (a) The name of a cooperative must include the words "electric," "telephone," "telecommunications," or "telecom," as appropriate to its purpose, and "cooperative" or "association," and the abbreviation "Inc."

(b) The name of a cooperative must be distinguishable on the records of the Department of Commerce, Community, and Economic Development from the name of any other organized entity and from a reserved or registered name. The Department of Commerce, Community, and Economic Development may adopt regulations under AS 44.62 (Administrative Procedure Act) to implement this subsection.

(c) The provisions of (a) of this section do not apply to a corporation that becomes subject to this chapter by compliance with AS 10.25.290 and 10.25.300 or 10.25.620 and that elects to retain a corporate name that does not comply with (a) of this section.

**Sec. 10.25.050. Incorporators.** Five or more persons, including cooperatives, may organize a cooperative.

**Sec. 10.25.060. Articles of incorporation.** (a) The articles of incorporation of a cooperative must recite that they are executed under this chapter and must state

- (1) the name of the cooperative;
- (2) the address of its principal office;
- (3) the names and the addresses of the incorporators;
- (4) the names and addresses of its directors.

(b) The articles may contain any provisions not inconsistent with this chapter that are considered necessary or advisable for the conduct of its business. The articles shall be signed by each incorporator and acknowledged by at least two of the incorporators, or on their behalf, if they are cooperatives. It is not necessary to recite in the articles the purpose for which the cooperative is organized or any of its corporate powers.

**Sec. 10.25.070. Bylaws.** The board of directors shall adopt the first bylaws of a cooperative to be adopted following an incorporation, conversion, merger, or consolidation. Thereafter the district delegates in cooperatives having three or more districts that are not connected by a road system to another district of the cooperative may adopt, amend, or repeal the bylaws by the affirmative vote of a majority of the district delegates voting on the adoption, amendment, or repeal at a meeting of the district delegates. In all other cooperatives the members shall adopt, amend, or repeal the bylaws by the affirmative vote of a majority of the members voting on the question. The bylaws must set out the rights and duties of members, district delegates, and directors and may contain other provisions for the regulation and management of the affairs of the cooperative consistent with this chapter or with the articles of incorporation of the cooperative.

**Sec. 10.25.080. Membership.** (a) Each incorporator of a cooperative shall be a member of the cooperative or of another cooperative that is a member of it. A person may not become a member unless that person agrees to use electric energy, telephone or related telecommunications service, or other services furnished by the cooperative when they are made available through its facilities.

- (b) Membership in a cooperative is not transferrable, except as provided in the bylaws. The bylaws may
- (1) prescribe additional qualifications and limitations on membership;
  - (2) require membership as a condition of obtaining service from the cooperative;
  - (3) provide for termination or suspension of membership; however, a membership may not be terminated unless procedures for termination are contained in the bylaws.

**Sec. 10.25.090. Meetings of members and district delegates.** (a) An annual meeting of the members of a cooperative shall be conducted as provided in the bylaws of the cooperative. An annual meeting of the members of a cooperative that has been divided into districts as provided for in AS 10.25.190 may consist of separate annual meetings of the members of each district. Unless prohibited by the articles or bylaws of the cooperative, the members of a cooperative may conduct an annual meeting by teleconference or another means of communication that ensures all members participating can hear each other during the meeting.

(b) Special meetings of the members or district delegates may be called by a majority of the board of directors or by not less than 10 percent of all members or 10 percent of all district delegates. A special meeting of the members of a cooperative that has been divided into districts as provided for in AS 10.25.190 may consist of separate special meetings of the members of each district.

(c) An annual meeting of district delegates of a cooperative shall be conducted as provided in the bylaws of the cooperative.

**Sec. 10.25.100. Notice of meetings.** Except as otherwise provided in this chapter or the articles or bylaws of a cooperative, written notice stating the time and place of each meeting of the members or district delegates shall be given to each member or district delegate, in person or by mail, electronic mail, or text message, not less than 15 days nor more than 60 days before the date of the meeting. Notice of a special meeting of the members, together with notice of the purpose for which the meeting is called, shall be given to each member or district delegate personally or by mail, electronic mail, or text message, not less than 90 days nor more than 120 days before the date of the meeting. If mailed, notice is considered given when the notice is deposited in the United States mail with postage prepaid addressed to the member or district delegate at the address of the member or delegate as the address appears on the records of the cooperative. If sent by text or electronic mail, notice is considered given when the notice is sent to the member's telephone number, if the telephone is capable of receiving text messages, or the electronic mailing address on record with the cooperative.

**Sec. 10.25.110. Quorum requirements.** (a) Unless the bylaws prescribe the presence of a greater percentage or number of the members for a quorum, a quorum for the transaction of business at all meetings of the members of a cooperative or the members of a district of a cooperative having not more than 1,000 members is five percent of all members, and a quorum for the transaction of business of the members of a cooperative or the members of a district

of a cooperative having more than 1,000 members is 50 members. If less than a quorum is present, or considered present under (c) of this section, at a meeting, a majority of those present, or considered present under (c) of this section, may adjourn the meeting from time to time without further notice.

(b) Unless the bylaws prescribe the presence of a greater percentage of the district delegates for a quorum, a quorum for the transaction of business at all meetings of the district delegates of a cooperative is 25 percent of all district delegates.

(c) Unless prohibited by the articles or bylaws, a member or delegate who votes on a matter by electronic communication received or mail postmarked before a meeting begins is considered to have attended the meeting for the matter on which the member or delegate voted.

**Sec. 10.25.120. Voting.** Each member is entitled to one vote on each matter submitted to a vote of the membership. Each member of a district is entitled to one vote on each matter submitted to a vote at a district meeting. A member may not vote by proxy but may vote, if the bylaws so provide, by mail.

**Sec. 10.25.125. Record date.** To determine the members entitled to notice of a meeting of the members or to vote on a matter that is to be submitted to a vote of the members, or for any other proper purpose, the board of directors may fix a date that occurs no more than 30 days before the date of notice or distribution of mail ballots as the record date for the determination. If a record date is not fixed for the determination of members entitled to notice of a meeting or to vote on a matter, the date on which notice of the meeting or of mail voting is first mailed is the record date. When a determination of members entitled to vote at a meeting is made, the determination applies until the meeting is adjourned sine die.

**Sec. 10.25.130. Waiver of notice.** A person entitled to notice of a meeting may waive notice in writing either before or after the meeting. Attendance at a meeting is a waiver of notice of the meeting, unless the person attends solely to object to the transaction of business because the meeting has not been legally called or convened.

**Sec. 10.25.140. Board of directors.** The business of a cooperative shall be managed by a board of not less than five directors, each of whom shall be a member of the cooperative or of another cooperative which is a member of it. The bylaws shall prescribe the number of directors, their qualifications other than those prescribed in this chapter, and the manner of holding meetings of the board of directors and of electing successors to directors who resign, die, or are otherwise incapable of acting. The bylaws shall provide for the removal of directors from office for cause and for the election of their successors. Directors may not receive salaries for the services as directors and, except in emergencies, may not receive salaries for their services in any other capacity without the approval of the members. The bylaws may, however, prescribe a fixed fee for each day of attendance at a meeting of the board of directors or other meeting while officially representing the cooperative and for each day of necessary travel to and from a meeting of the board of directors or other meeting while officially representing the cooperative and may provide for insurance and reimbursement of actual expenses incurred while performing duties as a director.

**Sec. 10.25.145. Liability, indemnification, and insurance.** (a) A protected person is not individually liable for conduct performed within the scope of the person's duties for the cooperative. However, the protected person may be held individually liable for conduct if it was not reasonable for the person to believe that the conduct was in, or not contrary to, the best interests of the cooperative.

(b) Unless prohibited by the articles of incorporation or bylaws, the cooperative shall indemnify a protected person who is or may be made a party to a contested matter against expenses actually and reasonably incurred in connection with the contested matter. However, the cooperative may not indemnify the protected person if the person did not reasonably believe the conduct to be in, or not opposed to, the best interests of the cooperative. With respect to a criminal action or proceeding, the cooperative shall indemnify a protected person unless the person had reasonable cause to believe that the conduct was unlawful.

(c) A cooperative may purchase and maintain insurance on behalf of a protected person against liability asserted against the protected person and incurred in an official capacity or arising out of the person's status, whether or not the cooperative would have the power to indemnify the person against the liability under this section.

(d) In this section

- (1) "conduct" includes action, inaction, and omission;
- (2) "contested matter" means a proposed, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative;
- (3) "expenses" include attorney fees, judgments, fines, and amounts paid in settlement;
- (4) "protected person" means a director, officer, employee, or agent of a cooperative.

**Sec. 10.25.150. Term of office of directors.** The directors of a cooperative named in articles of incorporation, consolidation, merger, or conversion hold office until the next annual meeting of the members and until their

successors are elected and qualify. Each elected director holds office for the term for which elected and until a successor is elected and qualifies.

**Sec. 10.25.160. Staggered terms of office for directors.** Instead of electing all directors annually, the bylaws may provide that directors shall be elected for terms not to exceed three years, or until their successors are elected and qualify, and that the terms of directors shall be staggered so that one-third of the directors, or a number as close to one-third as possible, shall be elected each year.

**Sec. 10.25.170. Quorum of board.** A majority of the board of directors constitutes a quorum.

**Sec. 10.25.175. Board meetings open; exceptions; remedy.** (a) A meeting of the board of directors may be attended by members of the cooperative. Except when voice votes are authorized, a vote shall be conducted in such a manner that the members may know the vote of each person entitled to vote. The board of directors may conduct a meeting by teleconference, or another means of communication that ensures all participating directors can hear each other during the meeting, if the board gives reasonable notice of the meeting and if members of the cooperative are able to attend the meeting sites and hear the meeting. This section applies only to a meeting at which a quorum of the board participates.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a regular or special meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the board. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. Formal action may not be taken during the executive session.

(c) The following excepted subjects may be discussed in an executive session:

(1) matters the immediate knowledge of which would clearly have an adverse effect on the finances of the cooperative;

(2) subjects that tend to prejudice the reputation and character of a person; however, the person may request a public discussion;

(3) matters discussed with an attorney for the cooperative, the immediate knowledge of which could have an adverse effect on the legal position of the cooperative;

(4) personnel matters.

(d) Notice shall be given for all regular or special meetings of the board of directors as provided in the bylaws of the cooperative.

(e) A member affected by action taken contrary to this section may bring a suit in the superior court. The court may order appropriate equitable relief after considering the circumstances of the case. Action taken contrary to this section is not void if other equitable relief is available and appropriate.

**Sec. 10.25.180. General powers of board.** The board of directors may exercise all of the powers of a cooperative not conferred upon the members by this chapter, its articles of incorporation or its bylaws.

**Sec. 10.25.190. Districts.** The bylaws may provide for the division of the territory served or to be served by a cooperative into two or more districts for any purpose, including, without limitation, the nomination and election of directors and the election and functioning of district delegates. These delegates, who shall be members, may nominate and elect directors. The bylaws shall prescribe the boundaries of the districts, or the manner of establishing the boundaries, and the manner of changing the boundaries, and the manner in which the districts function. No member at any district meeting and no district delegate at any meeting may vote by proxy or by mail. However, the election of directors shall be by mail unless the bylaws provide otherwise.

**Sec. 10.25.200. Officers.** The officers of a cooperative are those officers authorized by the bylaws. The officers shall be elected annually by the board of directors from among its members. If authorized by the bylaws, the election may be conducted by written ballot. When a person holding an office ceases to be a director, that person ceases to hold office. The board of directors may appoint those other agents or employees that it considers necessary or advisable and shall prescribe their powers and duties. An officer may be removed from office and a successor elected in the manner prescribed in the bylaws.

**Sec. 10.25.210. Amendment of articles of incorporation.** A cooperative may amend its articles of incorporation as follows, except that it may change the location of its principal office in the manner set out in AS 10.25.230:

(1) the proposed amendment shall be presented to the members or district delegates at a meeting or by written notice; if the proposed amendment is presented at a meeting, the notice of the meeting must set out or have attached to it the proposed amendment;

(2) if the proposed amendment, with any changes, is approved by the affirmative vote of not less than two-thirds of those members or district delegates voting on it, the presiding officer of the board of directors shall execute and acknowledge articles of amendment on behalf of the cooperative and the officer designated by the board shall affix and attest to the seal of the cooperative; if the cooperative accepts ballots both at a meeting and by mail, a member may vote by mail or at the meeting.

**Sec. 10.25.220. Contents of articles of amendment.** (a) The articles of amendment must recite that they are executed under this chapter and must state

- (1) the name of the cooperative;
- (2) the address of its principal office;
- (3) the amendment to its articles of incorporation.

(b) The presiding officer executing the articles of amendment shall make and annex to them an affidavit stating that the provisions of AS 10.25.210 and this section regarding the amendment were complied with.

**Sec. 10.25.230. Change of location of principal office.** A cooperative may, upon authorization of its board of directors or its members, change the location of its principal office by filing a certificate reciting the change of principal office, executed and acknowledged by its presiding officer under its seal, attested by the officer designated by the board, in the office of the commissioner.

**Sec. 10.25.235. Member's right to examine books and records.** A member of a cooperative may, at a reasonable time and for a proper purpose, examine and make copies of the books and records of the cooperative at the principal office of the cooperative. The cooperative may charge a member an amount equal to the actual cost of duplicating documents requested under this section. The cooperative may withhold books and records concerning specific matters that were prepared for or during an executive session under AS 10.25.175(c) and not subsequently made public by the cooperative. The cooperative may also withhold the identity of public information that was referred to during the executive session.

## ARTICLE 2. MERGER, CONSOLIDATION, AND CONVERSION

### Section

- 240. Merger
- 250. Contents of articles of merger
- 260. Consolidation
- 270. Contents of articles of consolidation
- 280. Effect of consolidation or merger
- 290. Conversion of existing corporation
- 300. Articles of conversion: contents and use as articles of incorporation

**Sec. 10.25.240. Merger.** (a) Except as provided in (b) of this section, one or more cooperatives, each designated in this section as "merging cooperative," may merge into another cooperative, designated in this section as "surviving cooperative," by complying with the following requirements:

(1) the proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger shall be submitted to the members of each merging cooperative and of the surviving cooperative; the notice shall have attached to it a copy of the proposed articles of merger;

(2) if the proposed merger and the proposed articles of merger, with any amendments, are approved by the affirmative vote of not less than two-thirds of those members of each cooperative voting on them, articles of merger in the form approved shall be executed and acknowledged on behalf of each cooperative by its presiding officer and its seal shall be affixed by the officer designated by the board.

(b) A merger of electric or telephone cooperatives may not take effect unless the surviving cooperative expressly agrees to comply with the terms of each collective bargaining agreement entered into between a merging cooperative and a labor organization representing employees of the cooperative that is in effect on the date of merger.

**Sec. 10.25.245. Merger of cooperative and corporation organized under AS 10.05.** *[Repealed, Sec. 24 ch 134 SLA 1988.]*

**Sec. 10.25.250. Contents of articles of merger.** (a) The articles of merger must recite that they are executed under this chapter and must state

- (1) the name of each merging cooperative and the address of its principal office;
- (2) the name of the surviving cooperative and the address of its principal office;
- (3) a statement that each merging cooperative and the surviving cooperative agree to the merger;
- (4) the names and addresses of the directors of the surviving cooperative;
- (5) the terms and conditions of the merger and the manner of carrying it into effect, including the manner in which members of the merging cooperatives may or shall become members of the surviving cooperative.

(b) The articles of merger may contain provisions not inconsistent with this chapter that are considered necessary or advisable for the conduct of the business of the surviving cooperative.

(c) The presiding officer of each cooperative shall make and annex to the articles an affidavit stating that the provisions of this section regarding the articles were complied with by the cooperative.

**Sec. 10.25.260. Consolidation.** Two or more cooperatives, designated in this section as "consolidating cooperative," may consolidate into a new cooperative, designated in this section as the "new cooperative," by complying with the following requirements:

(1) the proposition for the consolidation into the new cooperative and proposed articles of consolidation shall be submitted to the members of each consolidating cooperative; the notice shall have attached to it a copy of the proposed articles of consolidation;

(2) if the proposed consolidation and the proposed articles of consolidation, with any amendments, are approved by the affirmative vote of not less than two-thirds of those members of each consolidating cooperative voting on them, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating cooperative by its presiding officer and its seal shall be affixed and attested by the officer designated by the board.

**Sec. 10.25.270. Contents of articles of consolidation.** (a) The articles of consolidation must recite that they are executed pursuant to this chapter and must state

(1) the name of each consolidating cooperative and the address of its principal office;

(2) the name of the new cooperative and the address of its principal office;

(3) a statement that each consolidating cooperative agrees to the consolidation;

(4) the names and addresses of the directors of the new cooperative;

(5) the terms and conditions of the consolidation and the manner of carrying it into effect, including the manner in which members of the consolidating cooperatives may or shall become members of the new cooperative.

(b) The articles of consolidation may contain provisions not inconsistent with this chapter which are considered necessary or advisable for the conduct of the business of the new cooperative.

(c) The presiding officer of each consolidating cooperative executing the articles of consolidation shall make and annex to the articles an affidavit stating that the provisions of this section regarding the articles were complied with by the cooperative.

**Sec. 10.25.280. Effect of consolidation or merger.** (a) In the case of a consolidation the existence of the consolidating cooperatives ceases and the articles of consolidation are the articles of incorporation of the new cooperative. In the case of a merger the separate existence of the merging cooperatives ceases and the articles of incorporation of the surviving cooperative are amended to the extent that changes are provided for in the articles of merger.

(b) The rights, privileges, immunities and franchises, and all real and personal property including, without limitation, applications for membership, all debts due on whatever account and all other choses in action, of the consolidating or merging cooperatives are transferred to and vested in the new consolidated or surviving cooperative without further act or deed.

(c) The new consolidated or surviving cooperative is responsible and liable for the liabilities and obligations of each of the consolidating or merging cooperatives and a claim existing or action or proceeding pending by or against the consolidating or merging cooperatives may be prosecuted as if the consolidation or merger had not taken place, but the new consolidated or surviving cooperative may be substituted in its place.

(d) Neither the rights of creditors nor liens upon the property of the cooperatives are impaired by the consolidation or merger.

**Sec. 10.25.290. Conversion of existing corporation.** (a) A corporation organized under the laws of the state and supplying or having the corporate power to supply electric energy or to furnish telephone or related telecommunications service may be converted into a cooperative by complying with the requirements of this section and thereupon becomes subject to this chapter as if originally organized under this chapter.

(b) The proposition for the conversion of the corporation into a cooperative and proposed articles of conversion shall be submitted to a meeting of the members or stockholders of the corporation, or in case of a corporation having

no members or stockholders, to a meeting of the incorporators of the corporation. The notice of the meeting shall have attached to it a copy of the proposed articles of conversion.

(c) If the proposition for the conversion of the corporation into a cooperative and the proposed articles of conversion, with any amendments, are approved by the affirmative vote of not less than two-thirds of those members of the corporation voting on them or, if the corporation is a stock corporation, by the affirmative vote of the holders of not less than two-thirds of those shares of the capital stock of the corporation represented at the meeting and voting on them, or, in the case of a corporation having no members and no shares of its capital stock outstanding, by the affirmative vote of not less than two-thirds of its incorporators, articles of conversion in the form approved shall be executed and acknowledged on behalf of the corporation by its presiding officer and its seal shall be affixed and attested by the officer designated by the board.

**Sec. 10.25.300. Articles of conversion: contents and use as articles of incorporation.** (a) The articles of conversion must recite that they are executed under this chapter and must state

- (1) the name of the corporation and the address of its principal office prior to its conversion into a cooperative;
- (2) the statute or statutes under which it was organized;
- (3) a statement that the corporation elects to become a cooperative, nonprofit, membership corporation subject to this chapter;
- (4) its name as a cooperative;
- (5) the address of the principal office of the cooperative;
- (6) the names and addresses of the directors of the cooperative;
- (7) the manner in which members, stockholders or incorporators of the corporation are to become members of the cooperative.

(b) The articles of conversion may contain provisions not inconsistent with this chapter considered necessary or advisable for the conduct of the business of the cooperative.

(c) The presiding officer executing the articles of conversion shall make and annex to it an affidavit stating that the provisions of this section were complied with regarding the articles. The articles of conversion are the articles of incorporation of the cooperative.

### **ARTICLE 3. DISSOLUTION**

#### **Section**

**310. Dissolution of cooperative that has not commenced business**

**320. Dissolution of cooperative that has commenced business**

**330. Effect of filing certificate of dissolution and affidavit; corporate existence; involuntary dissolution**

**340. Notice to creditors and claimants**

**350. Termination of cooperative affairs**

**360. Contents of articles of dissolution**

**Sec. 10.25.310. Dissolution of cooperative that has not commenced business.** A cooperative that has not commenced business may be dissolved by delivering articles of dissolution to the commissioner. A majority of the incorporators shall execute and acknowledge articles of dissolution on behalf of the cooperative. The articles must state

- (1) the name of the cooperative;
- (2) the address of its principal office;
- (3) that the cooperative has not commenced business;
- (4) that sums received by the cooperative, less that part disbursed for expenses of the cooperative, have been returned or paid to those entitled to them;
- (5) that no debt of the cooperative is unpaid;
- (6) that a majority of the incorporators elect to dissolve the cooperative.

**Sec. 10.25.320. Dissolution of cooperative that has commenced business.** (a) A cooperative that has commenced business may be dissolved in the manner set out in this section.

(b) The proposition to dissolve shall be submitted to the members of the cooperative. The notice must state the proposition.

(c) The proposition is approved by the affirmative vote of at least two-thirds of the members voting on the proposition if the number of members voting to approve it constitutes a majority of all members of the cooperative.

(d) Upon approval, a certificate of election to dissolve, hereafter designated the "certificate," executed and acknowledged on behalf of the cooperative by its presiding officer under its seal, attested by the officer designated by the board, shall be submitted to the commissioner for filing together with an affidavit by the officer executing the certificate stating that the statements in the certificate are true. The certificate must state the name of the cooperative, the address of its principal office, and that the members of the cooperative have voted to dissolve the cooperative.

**Sec. 10.25.330. Effect of filing certificate of dissolution and affidavit; corporate existence; involuntary dissolution.** (a) Upon the filing of the certificate and affidavit by the commissioner, the cooperative shall cease to carry on its business except to the extent necessary for the winding up of business. However, its corporate existence continues until articles of dissolution have been filed by the commissioner.

(b) A cooperative that does not file its articles of dissolution within two years after the date of filing the certificate mentioned in (a) of this section shall be involuntarily dissolved by the commissioner. Before dissolving the cooperative under this subsection, the commissioner shall give the cooperative written notice of the pending dissolution by mailing the notice to the cooperative. The commissioner shall mail the notice and any subsequent certificate of dissolution to the cooperative in the same manner as required for notices and certificates of involuntary dissolution under AS 10.06.633(i).

**Sec. 10.25.340. Notice to creditors and claimants.** The board of directors shall immediately have a notice of the dissolution proceedings mailed to each known creditor of and claimant against the cooperative and publish it once a week for two successive weeks in a newspaper of general circulation in the city or borough in which the principal office of the cooperative is located.

**Sec. 10.25.350. Termination of cooperative affairs.** The board of directors shall wind up and settle the affairs of the cooperative, collect sums owing to it, liquidate its property and assets, pay and discharge its debts, obligations, and liabilities, other than those to patrons arising by reason of their patronage, and do all other things required to wind up its business. After paying or discharging or adequately providing for the payment or discharge of all its debts, obligations, and liabilities, other than those to patrons arising by reason of their patronage, the directors shall distribute remaining sums, first, to patrons for the pro rata return of all amounts standing to their credit by reason of their patronage and, second, to members for the pro rata repayment of membership fees. Sums then remaining shall be distributed among its members and former members in proportion to their patronage, except to the extent participation in the distribution has been legally waived. The board of directors shall thereupon authorize the execution of articles of dissolution. The presiding officer shall execute and acknowledge articles of dissolution on behalf of the cooperative and the officer designated by the board shall affix and attest to the seal.

**Sec. 10.25.360. Contents of articles of dissolution.** (a) The articles of dissolution must recite that they are executed under this chapter and must state

- (1) the name of the cooperative;
- (2) the address of its principal office;
- (3) the date on which the certificate of election to dissolve was filed by the commissioner;
- (4) that there are no actions or suits against the cooperative;
- (5) that all debts, obligations and liabilities of the cooperative have been paid and discharged or that adequate provision has been made for them;
- (6) that the provisions of AS 10.25.320 - 10.25.360 have been complied with.

(b) The presiding officer executing the articles of dissolution shall make and annex to the articles an affidavit stating that the statements contained in the articles are true.

#### **ARTICLE 4. MISCELLANEOUS PROVISIONS**

##### **Section**

- 370. Filing of articles**
- 375. Cancellation of certificates issued and filings accepted**
- 380. Nonprofit operation**
- 390. Disposition of property to secure indebtedness**
- 400. Limitations on disposition of property**
- 410. Nonliability of members for debts of cooperative**
- 420. Effect of recordation of mortgages and other instruments**
- 430. Validity of mortgage under Rural Electrification Act**

- 440. Construction standards
- 450. Directors, officers, or members as notaries
- 460. Registered office and registered agent
- 470. Change of registered office or registered agent
- 480. Execution and filing of statement
- 490. Resignation of registered agent
- 500. Service on cooperative
- 510. Service on commissioner
- 520. Other means of service not affected
- 530. Fees
- 540. Business license and taxation of cooperatives
- 550. Amount of telephone cooperative gross revenue tax
- 555. Amount of electric cooperative tax
- 560. Manner of computing telephone cooperative gross revenue
- 570. Refund to local governments
- 580. Inventory and fixtures subject to taxation
- 590. Connection and interconnection of facilities
- 600. Correction of defectively organized cooperatives

**Sec. 10.25.370. Filing of articles.** Articles of incorporation, amendment, consolidation, merger, conversion, or dissolution, when executed and acknowledged and accompanied by the affidavits required by this chapter, shall be presented to the commissioner for filing. Upon finding that the articles presented conform to the requirements of this chapter, the commissioner, upon payment of the fees provided in this chapter, shall file the articles in the records of the commissioner's office. Upon filing, the incorporation, amendment, consolidation, merger, conversion, or dissolution provided for is in effect. This section also applies to certificates of election to dissolve and affidavits executed under AS 10.25.320 - 10.25.360.

**Sec. 10.25.375. Cancellation of certificates issued and filings accepted.** The commissioner may, within one year after a filing, and after written notice to the cooperative or individual making a filing, cancel a certificate issued or filing accepted under this chapter, on any ground existing at the time notice of cancellation is made for which the commissioner could have originally refused to issue the certificate or accept the filing. The notice of cancellation must state the reason for the proposed cancellation. A cooperative or individual may request a hearing within 90 days after receipt of the notice. The notice of cancellation becomes final if the cooperative or individual does not request a hearing within 90 days after receipt of notice. Notice of cancellation must be sent by certified mail with return receipt requested. If the return receipt is not received by the department within a reasonable time and the department has made diligent inquiry as to the current address of the corporation, notice may be made by publication in a newspaper of general circulation in the vicinity of the registered office of the cooperative or the address of the individual who made the filing, and the cancellation becomes final 60 days after publication of the notice.

**Sec. 10.25.380. Nonprofit operation.** A cooperative shall be operated on a nonprofit basis for the mutual benefit of its members and patrons. The bylaws of a cooperative or its contracts with members and patrons must contain such provisions relating to the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its nonprofit and cooperative character.

**Sec. 10.25.390. Disposition of property to secure indebtedness.** The board of directors of a cooperative may, without authorization by the members of the cooperative, authorize the execution and delivery of mortgages or deeds of trust of, or the pledging or encumbering of, the property, assets, rights, privileges, licenses, franchises and permits of the cooperative, whether acquired or to be acquired, and wherever situated, as well as the revenue therefrom, upon the terms and conditions the board of directors determines, to secure an indebtedness of the cooperative.

**Sec. 10.25.400. Limitations on disposition of property.** (a) A cooperative may not otherwise sell, lease, or dispose of more than 15 percent of the cooperative's total assets, less depreciation, as reflected on the books of the cooperative at the time of the transaction unless the transaction is authorized under this section. The transaction is approved by the affirmative vote of not less than two-thirds of the members voting on the transaction if the number of members voting to approve it constitutes a majority of all the members of the cooperative. However, notwithstanding a provision of this chapter or any other provision of law, the board of directors may, upon the authorization of a majority of those members of the cooperative voting on the issue in an election in which at least 10 percent of the eligible members return ballots, sell, lease, or otherwise dispose of all or a substantial portion of its property to another cooperative or to the state if the sale complies with (d) of this section.

(b) Before a vote to authorize the disposition or sale of more than 15 percent of the total assets of the cooperative, other than a vote to authorize disposition or sale to the state or another cooperative, the board of directors shall

(1) have the tangible and intangible property that is proposed for sale appraised by two appraisers; one appraiser shall be chosen by the proposed buyer; the appraisers may not be associated with the cooperative or a proposed buyer of cooperative property; each appraiser shall deliver a copy of the appraisal to the cooperative and to the proposed buyer; the first proposed buyer shall advance to the cooperative money sufficient to pay for the appraisals; if a buyer other than the first proposed buyer purchases the assets based on the appraisals, the actual buyer shall reimburse the first proposed buyer for the cost of the appraisals;

(2) notify all cooperative members, at least 90 days in advance, of a vote on disposition of cooperative property; the notice must contain detailed proposals for disposition of the property;

(3) at least 90 days before the vote, notify all other cooperatives situated and operating in the state that the property is available for disposition and include with the notice one copy of each appraisal of the property;

(4) at least 30 days before the vote, mail to all members any alternate proposals made by another cooperative, or by cooperative members if an alternate proposal signed by at least 50 members has been submitted to the board, together with any recommendation that the board has made; and

(5) place each proposal for which notice has been given on the ballot.

(c) This section does not apply to the transfer of cooperative property under AS 10.25.240 - 10.25.300.

(d) The sale of a cooperative may not take effect unless the purchaser expressly agrees to comply with the terms of each collective bargaining agreement entered into between the cooperative being sold and a labor organization representing employees of the cooperative that is in effect on the date of sale.

(e) *[Repealed, Sec. 22 ch 29 SLA 2020.]*

**Sec. 10.25.410. Nonliability of members for debts of cooperative.** A member is not liable or responsible for any debts of the cooperative and the property of the members is not subject to execution therefor.

**Sec. 10.25.420. Effect of recordation of mortgages and other instruments.** A mortgage, deed of trust, or other instrument executed by a cooperative, which affects real and personal property and which is recorded in the real property records in the city, borough, or other recording districts in which the property is located or is to be located has the same effect as if recorded, filed or indexed as provided by law in the proper office in the city, borough, or other recording district as a mortgage of personal property. All after-acquired property of the cooperative described or referred to as being mortgaged or pledged in a mortgage, deed of trust or other instrument is subject to the lien thereof immediately upon the acquisition of such property by the cooperative, whether or not the property was in existence at the time of the execution of the mortgage, deed of trust or other instrument. Recordation of such mortgage, deed of trust or other instrument constitutes notice and has the same effect with respect to after-acquired property as it has under the laws relating to recordation of property owned by the cooperative at the time of the execution of the mortgage, deed of trust or other instrument and described in it or referred to as being mortgaged or pledged thereby. The lien of such mortgage, deed of trust or other instrument upon personal property after its recordation continues for the period of time specified in the instrument without refileing or the filing of a renewal certificate, affidavit or other supplemental information required by the laws relating to the renewal, maintenance or extension of liens upon personal property.

**Sec. 10.25.430. Validity of mortgage under Rural Electrification Act.** A mortgage made by a cooperative organized under this chapter to the United States of America, or an agency or instrumentality of it, to secure indebtedness incurred under 7 U.S.C. 901 - 950bb-2 (Rural Electrification Act), as amended, is not void as against creditors of the mortgagor and subsequent purchasers and encumbrancers of the property in good faith for value because the mortgage is not accompanied by an affidavit of the parties to it, or an affidavit of the agent or attorney-in-fact of a party to it, that the mortgage is made in good faith to secure the amount named, and without a design to hinder, delay or defraud creditors. A mortgage made by a cooperative organized under this chapter to the United States of America, or an agency or instrumentality of it to secure indebtedness incurred under 7 U.S.C. 901 - 950bb-2 (Rural Electrification Act), as amended, need not set out the date upon which the indebtedness secured by it becomes due.

**Sec. 10.25.440. Construction standards.** Construction of electric lines and facilities, or telephone lines and facilities, by a cooperative shall, as a minimum requirement, comply with the standards of the National Electrical Safety Code in effect at the time of construction.

**Sec. 10.25.450. Directors, officers, or members as notaries.** A person authorized to take acknowledgments under the laws of this state is not disqualified from taking acknowledgments of instruments to which a cooperative is a party because the person is an officer, director or member of the cooperative.

**Sec. 10.25.460. Registered office and registered agent.** Each cooperative shall have and continuously maintain in the state a registered

- (1) office, which may be, but need not be, the same as the location of the principal office;
- (2) agent who is either an individual resident in the state whose business office is identical with the registered office or a domestic or foreign corporation authorized to transact business in the state whose business office is identical with the registered office.

**Sec. 10.25.470. Change of registered office or registered agent.** A cooperative may change its registered office or change its registered agent, or both, upon filing in the office of the commissioner a statement setting forth

- (1) the name of the cooperative;
- (2) the address of its registered office;
- (3) if the address of its registered office is changed, the address of the new registered office;
- (4) the name of the registered agent;
- (5) if its registered agent is changed, the name of its new registered agent;
- (6) that the address of its registered office and the address of the business office and its registered agent, as changed, will be identical;
- (7) that such change was authorized by resolution adopted by its board of directors.

**Sec. 10.25.480. Execution and filing of statement.** The statement of change of office or agent shall be executed by the cooperative by its presiding officer and directed to the commissioner. If the commissioner finds that the statement conforms to this chapter, the commissioner shall file it in the commissioner's office. Upon the filing, the change of address of the registered office, and the appointment of the registered agent, or both, as the case may be, is effective.

**Sec. 10.25.490. Resignation of registered agent.** A registered agent of a cooperative may resign by filing a written notice of resignation, executed in duplicate, with the commissioner. The commissioner shall immediately mail a copy of it to the cooperative at its registered office. The appointment of the agent terminates 30 days after receipt of the notice by the commissioner.

**Sec. 10.25.500. Service on cooperative.** (a) The registered agent of a cooperative is an agent of the cooperative upon whom process, notice, or demand required or permitted by law to be served upon the cooperative may be served.

(b) When a cooperative fails to appoint or maintain a registered agent in the state, or when its registered agent cannot with reasonable diligence be found at the registered office, then the commissioner is an agent of the cooperative upon whom process, notice, or demand may be served.

**Sec. 10.25.510. Service on commissioner.** (a) Service on the commissioner is made by delivering to and leaving with the commissioner, or with a clerk having charge of the corporation department of the commissioner's office, duplicate copies of the process, notice or demand. The commissioner shall immediately have one copy forwarded by registered mail, addressed to the cooperative at its registered office. Service on the commissioner is returnable in not less than 30 days.

(b) The commissioner shall keep a record of each process, notice and demand served under this section, and shall record the time of service and the commissioner's action with reference to it.

**Sec. 10.25.520. Other means of service not affected.** Nothing in AS 10.25.500 and 10.25.510 limits or affects the right to serve process, notice or demand required or permitted by law to be served on a cooperative in any other manner permitted by law.

**Sec. 10.25.530. Fees.** (a) The commissioner shall establish by regulation and charge and collect fees for

- (1) filing articles of incorporation;
- (2) filing articles of amendment;
- (3) filing articles of consolidation or merger;
- (4) filing articles of conversion;
- (5) filing certificate of election to dissolve;
- (6) filing articles of dissolution;
- (7) filing certificate of change of principal office and designation or change of registered office and registered agent; and
- (8) acting as agent for service of process.

(b) The department may by regulation charge each cooperative subject to this chapter a fixed fee in place of the various fees specified in this chapter and for the routine administrative services rendered to the corporation by the department.

(c) *[Repealed, Sec. 28 ch 90 SLA 1991.]*

**Sec. 10.25.540. Business license and taxation of cooperatives.** (a) Cooperatives under this chapter shall apply for a business license and pay the initial license fee as provided by the Alaska Business License Act (AS 43.70), as amended.

(b) Before March 1 of each year,

(1) each telephone cooperative shall pay to the state, instead of state and local ad valorem, income, and excise taxes that may be assessed or levied, a percentage of its gross revenue earned during the preceding calendar year;

(2) each electric cooperative shall pay to the state, instead of state and local ad valorem, income, and excise taxes that may be assessed or levied, a tax on the number of kilowatt hours of electricity sold at retail by the cooperative during the preceding calendar year.

**Sec. 10.25.550. Amount of telephone cooperative gross revenue tax.** The telephone cooperative gross revenue tax shall be computed as follows:

(1) one percent of gross revenue for cooperatives that have furnished telephone service to consumers for less than five years as of December 31 of the preceding calendar year;

(2) two percent of gross revenue for cooperatives that have furnished telephone service to consumers for five years or longer as of December 31 of the preceding calendar year.

**Sec. 10.25.555. Amount of electric cooperative tax.** (a) The electric cooperative tax shall be computed as follows:

(1) one-fourth mill per kilowatt hour for cooperatives that have furnished electric energy and power to consumers for less than five years as of December 31 of the preceding calendar year;

(2) one-half mill per kilowatt hour for cooperatives that have furnished electric energy and power to consumers for five years or longer as of December 31 of the preceding calendar year.

(b) In this section, "mill" means one-tenth of one cent.

**Sec. 10.25.560. Manner of computing telephone cooperative gross revenue.** Gross revenue of a telephone cooperative includes all revenue earned from local and toll services.

**Sec. 10.25.570. Refund to local governments.** The proceeds of the telephone cooperative gross revenue tax and the electric cooperative tax, less the amount expended by the state in their collection, shall be refunded to an organized borough or a city of any class incorporated under state law, in the proportion that the revenue was earned within the city or the borough area outside the city. However, taxes collected on gross revenue earned by a telephone cooperative or on the sale of electricity by an electric cooperative outside a city or organized borough shall be retained by the state and deposited into its general fund.

**Sec. 10.25.580. Inventory and fixtures subject to taxation.** The inventory and fixtures of a business operated by a cooperative incidental to the furnishing of central station electric service, including, without limitation, appliance stores or departments, is not exempt from ad valorem taxes. The inventory and accounts of these businesses shall be separately maintained and taxes shall be paid upon them as provided by law.

**Sec. 10.25.590. Connection and interconnection of facilities.** A telephone cooperative organized or doing business under this chapter, hereafter designated as applicant, may require a person furnishing telephone service to the public in the state, hereafter designated as company, to interconnect its lines, facilities or systems with, or otherwise make available the lines, facilities or systems to, the applicant's telephone lines, facilities or systems, in order to provide a continuous line of communication for the applicant's subscribers. If the company and the applicant are unable to agree upon the terms and conditions of interconnection, including compensation, the superior court shall, upon petition of the parties, or either of them, establish the terms and conditions. The terms and conditions shall be reasonable and nondiscriminatory.

**Sec. 10.25.600. Correction of defectively organized cooperatives.** If a cooperative has filed defective articles of incorporation, or has failed to do all things necessary to perfect its corporate organization, it may file corrected articles of incorporation, or amend the original articles, and do and perform all acts and things necessary for the correction of the defects. The action so taken is valid and binding upon all persons concerned. The capacity of the cooperative to file corrected articles of incorporation or amendments to the original articles, or to do and perform all acts and things necessary, may not be questioned.

**ARTICLE 5.  
GENERAL PROVISIONS**

**Section**

- 810. Purpose**
- 820. Chapter extended to existing cooperatives**
- 830. Construction of chapter**
- 840. Definitions**
- 850. Short title**

**Sec. 10.25.810. Purpose.** Cooperative, nonprofit, membership corporations may be organized under this chapter for the purpose of supplying electric energy or telephone or related telecommunications service and promoting and extending the use of these services.

**Sec. 10.25.820. Chapter extended to existing cooperatives.** This chapter applies to all nonprofit cooperatives organized under any other law of the state for the purpose of supplying electric energy and power, or telephone or related telecommunications service, to its members, or for the purpose of promoting and extending the use of electric energy and power or telephone or related telecommunications service. These cooperatives are subject to this chapter as if originally organized under it.

**Sec. 10.25.830. Construction of chapter.** This chapter is complete in itself and is controlling. The provisions of any other law of the state relating to the organization of a corporation, except as provided in this chapter, do not apply to a cooperative organized under this chapter. The enumeration of an object, purpose, power, manner, method or thing does not exclude like or similar objects, purposes, powers, manners, methods or things.

**Sec. 10.25.840. Definitions.** In this chapter,

- (1) "commissioner" means the commissioner of commerce, community, and economic development;
- (2) "cooperative" means a corporation organized under this chapter or that becomes subject to this chapter in the manner provided in this chapter;
- (3) "person" means a natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision, or an agency of the state or political subdivision, or a body politic;
- (4) "presiding officer" means the presiding officer of the board of directors of the cooperative;
- (5) "related telecommunications service" means
  - (A) the transmission and reception of messages, impressions, pictures, and signals by means of electricity, electromagnetic waves, or any other source of energy, force variations, or impulses, whether conveyed by cable, wire, radiated through space, or transmitted through other media; or
  - (B) a service capable of electronically generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information, through the use of broadband Internet access, data center services, information technology, or other technology services;
- (6) "telephone service" means communication service whereby voice communication through the use of electricity is the principal intended use, and includes all telephone lines, facilities, or systems used in the rendition of this service.

**Sec. 10.25.850. Short title.** This chapter may be cited as the Electric and Telephone Cooperative Act.

**CHAPTER 30.  
CEMETERY ASSOCIATIONS AND NONPROFIT  
CEMETERY CORPORATIONS**

**Section**

- 10. Formation of cemetery association**
- 20. Records**
- 30. Effect of filing and recording**
- 40. Succession and powers of trustees**
- 50. Bylaws**
- 55. Formation of nonprofit cemetery corporation**
- 58. Other transactions**
- 60. Power to acquire and dispose of lands, and exemption from execution, taxation, and public appropriation**

- 70. **Creation and use of irreducible fund**
- 80. **Disposition of income from cemetery land**
- 90. **Debts of association or corporation**
- 100. **Transfer of cemetery lots**
- 110. **Sale of unsuitable land**
- 120. **Purpose of sale by lots, and exemptions**
- 130. **Plans of grounds and cemetery lots**
- 140. **Maintenance of cemetery land**
- 150. **Annual financial statement**
- 155. **Definition**

**Sec. 10.30.010. Formation of cemetery association.** Five or more persons who are residents of the same recording district may form themselves into a cemetery association, and elect at least three of their members to serve as trustees, and one member as clerk. The trustees and the clerk hold office at the pleasure of the association.

**Sec. 10.30.020. Records.** The clerk shall keep a record of the proceedings of the meetings of the association, certify to and record one copy of the record together with the name of the association with the recorder in the recording district in which the meeting is held, and file one copy in the office of the clerk of the superior court.

**Sec. 10.30.030. Effect of filing and recording.** Upon filing and recording the record as required in AS 10.30.020 the trustees and members of the association and successors are invested with the powers, privileges, and immunities, incident to aggregate corporations.

**Sec. 10.30.040. Succession and powers of trustees.** The trustees of a cemetery association have perpetual succession, and may contract, and prosecute and defend actions.

**Sec. 10.30.050. Bylaws.** A cemetery association may enact bylaws necessary for the proper management of the association and may prescribe the terms on which members may be admitted, the number of its trustees and officers, and the time and manner of their election or appointment, and the time and place of meeting for the trustees and for the association.

**Sec. 10.30.055. Formation of nonprofit cemetery corporation.** As an alternative to the provisions of AS 10.30.010 - 10.30.050, a cemetery may be incorporated under AS 10.20. A nonprofit cemetery corporation is subject to the provisions of AS 10.20 except to the extent that those provisions conflict with the provisions of this chapter relating to cemetery corporations.

**Sec. 10.30.058. Other transactions.** A cemetery association and a nonprofit cemetery corporation may enter into mergers, interest exchanges, conversions, and domestications under AS 10.55 (Alaska Entity Transactions Act).

**Sec. 10.30.060. Power to acquire and dispose of lands, and exemption from execution, taxation, and public appropriation.** A cemetery association or nonprofit cemetery corporation may buy or take by gift or devise, and hold, land not exceeding 80 acres, for the sole purpose of a cemetery. The land is exempt from execution, and from any appropriation to public purposes, and from taxation if intended to be used exclusively for burial purposes and in no way for the profit of the members or trustees of the association or the directors, officers, or employees of the corporation.

**Sec. 10.30.070. Creation and use of irreducible fund.** A cemetery association or nonprofit cemetery corporation may by its bylaws provide that a stated percentage of the money realized from the sale of cemetery lots and donations constitutes an irreducible fund, which may be invested in the manner or loaned upon the securities the association or corporation considers proper. The interest or income from the irreducible fund provided for in a bylaw, or as much as may be necessary, shall be devoted exclusively to (1) the preservation and embellishment of the grounds, buildings and property of the association or corporation that are related to the operation of a cemetery; (2) the preservation and embellishment of cemetery lots and space in buildings or on grounds sold to the association or corporation that are related to the operation of a cemetery; or (3) the payment of interest and principal of debts authorized by the association or corporation for the purchase of land or equipment or for the construction or improvement of buildings that are related to the operation of a cemetery. If a bylaw has been enacted for the creation of an irreducible fund, the percentage stated in the bylaw may not be reduced.

**Sec. 10.30.080. Disposition of income from cemetery land.** After paying for the land, the future receipts and income of a cemetery association or nonprofit cemetery corporation, subject to the creation of an irreducible fund,

whether from the sale of lots, from donations, rents, or otherwise, shall be applied exclusively to laying out, preserving, protecting, and embellishing the cemetery and the avenues leading to it, the erection of buildings necessary or convenient for the cemetery purpose, and to paying the necessary expenses of the association or corporation.

**Sec. 10.30.090. Debts of association or corporation.** A cemetery association or nonprofit cemetery corporation may contract debts in anticipation of future receipts for the original purchase of cemetery land, the laying out and embellishment of the grounds and avenues of the cemetery, the construction and repair of a building, mausoleum or columbarium, the purchase or lease of necessary equipment, or other cemetery purposes, for which debts the association or corporation may issue bonds or notes. An association or corporation may secure these debts by mortgage upon its lands, except cemetery lots that have been conveyed to the members of the association or to trustees, officers or employees of the corporation, or by a security interest in not more than 50 percent of the irreducible fund.

**Sec. 10.30.100. Transfer of cemetery lots.** A cemetery association or nonprofit cemetery corporation may adopt regulations the association or corporation consider expedient for disposing of and conveying cemetery lots.

**Sec. 10.30.110. Sale of unsuitable land.** The trustees of a cemetery association or nonprofit cemetery corporation may, whenever in their opinion a portion of cemetery land is unsuitable for burial purposes, sell the portion and apply the proceeds to the general purposes of the association or corporation.

**Sec. 10.30.120. Purpose of sale by lots, and exemptions.** Cemetery lots sold by a cemetery association or a nonprofit cemetery corporation are for the sole purpose of interment and are exempt from taxation, execution, attachment, or any other claim, lien, or process, if used exclusively for burial purposes without an intention to obtain a profit.

**Sec. 10.30.130. Plans of grounds and cemetery lots.** A cemetery association or nonprofit cemetery corporation shall have a plan of its grounds and cemetery lots as laid out made and recorded in a book kept for that purpose by the clerk of the association or the secretary of the corporation. The cemetery lots shall be numbered by consecutive numbers.

**Sec. 10.30.140. Maintenance of cemetery land.** A cemetery association or nonprofit cemetery corporation may enclose, improve, and adorn the grounds and avenues, erect buildings for the use of the association or corporation, adopt rules for the designation and adornment of cemetery lots and for erecting monuments in the cemetery, and prohibit any use, division, improvement, or adornment of a cemetery lot that the association or corporation considers improper.

**Sec. 10.30.150. Annual financial statement.** An annual statement of the financial affairs of a cemetery association or a nonprofit cemetery corporation shall be made by the clerk of the association or the secretary of the corporation.

**Sec. 10.30.155. Definition.** In this chapter, "cemetery lot" means a lot, plot, space, grave, niche, mausoleum, crypt, vault or columbarium, used or intended to be used for the interment of human remains.

## **CHAPTER 35. BUSINESS NAMES**

### **Section**

- 10. Reservation of name**
- 20. Application to reserve name; availability of name**
- 30. Transfer of reserved name**
- 40. Registration of name**
- 50. Procedure for registration of name**
- 60. Fee for and duration of registered name**
- 70. Renewal of registered name**
- 80. Business names not registered**
- 85. Cancellation of certificates issued and filings accepted**
- 500. Definitions**

**Sec. 10.35.010. Reservation of name.** The exclusive right to the use of a business name may be reserved by a person intending to start a business or a person intending to change the name of the person's business.

**Sec. 10.35.020. Application to reserve name; availability of name.** (a) Reservation of a business name is made by filing an application with the commissioner. Upon finding that the name is available for business use, the commissioner shall reserve it for the exclusive use of the applicant for a period of 120 days. A name is not available for business use if the name is not distinguishable on the records of the department under AS 10.35.040(a) or gives the impression that the business is incorporated.

(b) The department may adopt regulations under AS 44.62 (Administrative Procedure Act) to implement this section.

**Sec. 10.35.030. Transfer of reserved name.** The holder of a reserved name may transfer the right to the exclusive use of the name to another person by filing with the commissioner a notice of transfer that is signed by the holder and specifies the name and address of the transferee.

**Sec. 10.35.040. Registration of name.** (a) A person conducting a business may register its name if the name is distinguishable on the records of the department from the name of any other organized entity and from a reserved or registered name. In this subsection,

(1) "organized entity" means

(A) a corporation under AS 10.06;

(B) a foreign corporation authorized under AS 10.06 to transact business in this state;

(C) a BIDCO licensed under AS 10.13;

(D) a cooperative organized under AS 10.15;

(E) a foreign cooperative under AS 10.15 that is authorized under AS 10.06 to do business in this state;

(F) a nonprofit corporation organized under AS 10.20;

(G) a nonprofit foreign corporation authorized under AS 10.20 to transact business in this state;

(H) a cooperative organized under AS 10.25;

(I) a religious corporation formed under AS 10.40;

(J) a professional corporation organized under AS 10.45;

(K) a limited liability company organized under AS 10.50;

(L) a foreign limited liability company registered under AS 10.50;

(M) a registered limited liability partnership under AS 32.06;

(N) a foreign limited liability partnership registered under AS 32.06;

(O) a limited partnership formed under AS 32.11; or

(P) a foreign limited partnership registered under AS 32.11;

(2) "reserved or registered name" means a name reserved or registered under this chapter, AS 10.06, AS 10.50, AS 32.06, or AS 32.11.

(b) Registration of a name gives the person who has registered the name the exclusive right to the use of the name. A person who has registered a name under this chapter

(1) may enjoin the use by another person of a name that is not distinguishable on the records of the department from the registered name;

(2) has a cause of action for damages against another person who uses a name that is not distinguishable on the records of the department from the registered name.

(c) The department may adopt regulations under AS 44.62 (Administrative Procedure Act) to implement (a) of this section.

**Sec. 10.35.050. Procedure for registration of name.** Registration of a business name is made by filing with the commissioner an application for registration. The application must be executed by an owner of the business and must contain the owner's name and address, the name and addresses of the business, the name and address of each person having an interest in the business, a statement that the owner is doing business, and a brief statement of the nature of the business.

**Sec. 10.35.060. Fee for and duration of registered name.** The fee for the initial registration of a business name shall be established by the department by regulation. The year in which the registration becomes effective is considered a full year of registration and the registration is effective until the close of the fifth calendar year beginning with the year of initial registration.

**Sec. 10.35.070. Renewal of registered name.** A registered business name may be renewed every five years if an application for renewal is filed. An application for renewal must set out the facts required in an original application for registration and be accompanied by a renewal fee to be established by the department by regulation.

An application for renewal may be filed between October 1 and December 31 of any year. The renewal of the registration extends the registration for the following five calendar years.

**Sec. 10.35.075. Accounting and disposition of fees.** [Repealed, Sec. 28 ch 90 SLA 1991].

**Sec. 10.35.080. Business names not registered.** This chapter does not abrogate any rights between persons who have not registered a business name under those sections.

**Sec. 10.35.085. Cancellation of certificates issued and filings accepted.** The provisions in AS 10.06 (Alaska Corporations Code) relating to the cancellation of certain corporate filings apply to business names.

**Sec. 10.35.500. Definitions.** In this chapter,

(1) "business" means any commercial or industrial enterprise which is not incorporated and which may be owned by a person or persons, partnership, firm, association or organization;

(2) "commissioner" means the commissioner of commerce, community, and economic development;

(3) "department" means the Department of Commerce, Community, and Economic Development.

## CHAPTER 40. RELIGIOUS CORPORATIONS

### Section

**10. Authorized purposes**

**15. Distinguishable name**

**20. Execution of articles of incorporation**

**30. Filing and recording of articles of incorporation**

**40. Contents of articles of incorporation**

**50. Amendment of articles and change of seal**

**60. Corporate existence**

**70. Corporate powers**

**80. Execution of instruments**

**90. Filing impression of seal**

**100. Articles as evidence of corporate existence**

**105. Biennial report**

**110. Succession to property upon death, resignation, or removal of person incorporated as corporation sole**

**125. Other transactions**

**130. Service of process**

**140. Fees and penalties**

**145. Cancellation of certificates issued and filings accepted**

**150. Involuntary dissolution**

**Sec. 10.40.010. Authorized purposes.** A corporation may be formed for acquiring, holding, or disposing of church or religious society property, for the benefit of religion, for works of charity and education, and for public worship.

**Sec. 10.40.015. Distinguishable name.** A corporate name must be distinguishable on the records of the Department of Commerce, Community, and Economic Development from the name of another organized entity and from a reserved or registered name. The department may adopt regulations to enforce this section. In this section, "organized entity" and "reserved or registered name" have the meanings given in AS 10.35.040.

**Sec. 10.40.020. Execution of articles of incorporation.** An archbishop, bishop, president, trustee in trust, president of stake, president of congregation, overseer, presiding elder, or clergyman, of a church or religious society, who has been chosen, elected or appointed, in conformity with the constitution, canons, rites, regulations, or discipline of the church or religious society, and in whom is vested the legal title to the property of the church or religious society, may execute written articles of incorporation in triplicate, acknowledged before an officer authorized to take acknowledgments.

**Sec. 10.40.030. Filing and recording of articles of incorporation.** One copy of the articles shall be filed with the Department of Commerce, Community, and Economic Development; one copy shall be filed in the office of the clerk of the superior court in the judicial district in which the principal place of business of the corporation is to be

located; and one copy shall be retained by the corporation. Each copy filed shall be recorded in a book kept for that purpose.

**Sec. 10.40.040. Contents of articles of incorporation.** The articles of incorporation must specify

- (1) the name of the corporation;
- (2) the purpose of the corporation;
- (3) the estimated value of its property at the time of executing the articles of incorporation;
- (4) the title of the person executing the articles; and
- (5) the name and address of the person upon whom process may be served.

**Sec. 10.40.050. Amendment of articles and change of seal.** A corporation formed under this chapter may alter or amend its articles of incorporation and change its seal. The amendment and change of seal shall be made by the corporation and executed by the person who executed the original articles of incorporation, or by a successor in office, and shall be filed and recorded in the same office and in the same manner as is provided for filing the original articles.

**Sec. 10.40.060. Corporate existence.** Upon the filing of the articles of incorporation for record the person subscribing the articles and a successor in office by the name or title specified in the articles is a corporation sole, with continual perpetual succession.

**Sec. 10.40.070. Corporate powers.** A corporation organized under this chapter may

- (1) acquire by donation, gift, bequest, devise or purchase, and hold and maintain real and personal property, and grant, sell, convey or otherwise dispose of property as may be necessary to carry on or promote the objects of the corporation, but not for the purpose of obtaining revenue or profits from the property;
- (2) borrow money and give written obligations for repayment, and give mortgages or other liens upon real or personal property to secure payment of written obligations, when necessary to promote the objects of the corporation;
- (3) enter into contracts;
- (4) sue and be sued;
- (5) adopt and use a common seal by which all deeds and acts of the corporation may be authenticated.

**Sec. 10.40.080. Execution of instruments.** All deeds and other instruments of writing shall be made in the name of the corporation and signed by the person representing the corporation in the official capacity designated in the articles of incorporation, and sealed with the seal of the corporation.

**Sec. 10.40.090. Filing impression of seal.** An impression of the corporate seal shall be filed with the Department of Commerce, Community, and Economic Development.

**Sec. 10.40.100. Articles as evidence of corporate existence.** The articles of incorporation or a certified copy of those filed with the Department of Commerce, Community, and Economic Development are evidence of the existence of the corporation.

**Sec. 10.40.105. Biennial report.** A corporation formed under this chapter shall file a biennial report with the commissioner of commerce, community, and economic development setting out the real and personal property assets of the corporation.

**Sec. 10.40.110. Succession to property upon death, resignation, or removal of person incorporated as corporation sole.** In the event of the death or resignation of the archbishop, bishop, president, trustee in trust, president of stake, president of congregation, overseer, presiding elder, or member of the clergy, who has formed a corporation under this chapter, or such a person's removal from office by the person or body having removal authority, the successor in office as the corporation sole is vested with the title of all property held by the successor's predecessor with the same power and authority over the property, subject to all the legal liabilities and obligations with reference to the property. The successor shall record in the office of each recording district in which the corporation owns real property a certificate of the successor's commission or certified copy of a letter of election or appointment.

**Sec. 10.40.120. Succession to property on death, resignation, or removal of person not incorporated as corporation sole.** Upon the death, resignation, or removal of an archbishop, bishop, president, trustee in trust, president of stake, president of congregation, overseer, presiding elder, or member of the clergy, who at the time of death, resignation, or removal was holding the title to trust property for the use or benefit of a church or religious

society and not incorporated under this chapter as a corporation sole, the title to all property held by that person does not revert to the donor nor pass to the heirs of the deceased person, but is in abeyance until a successor is appointed to fill the vacancy. Upon the appointment of the successor the title of all the property held by the predecessor immediately vests in the person appointed to fill the vacancy.

**Sec. 10.40.125. Other transactions.** A corporation formed under this chapter may enter into mergers, interest exchanges, conversions, and domestications under AS 10.55 (Alaska Entity Transactions Act).

**Sec. 10.40.130. Service of process.** (a) A corporation organized under this chapter shall continuously maintain on file with the department the name and address of a person designated to act as agent for the purpose of accepting service of process.

(b) When a corporation fails to designate such a person and maintain this information on file, the commissioner is the agent upon whom process may be served. Service on the commissioner shall be made in the same manner as provided in AS 10.06.

(c) [Repealed, Sec. 61 ch 50 SLA 1989].

**Sec. 10.40.140. Fees and penalties.** (a) Any document required to be filed with the commissioner under this chapter shall be accompanied by a fee to be established by the department by regulation.

(b) The commissioner shall collect a penalty of \$5 a year or fraction of a year of the amount due from any corporation that fails to file any document or pay any fee within the time prescribed by this chapter.

(c) [Repealed, Sec. 28 ch 90 SLA 1991].

**Sec. 10.40.145. Cancellation of certificates issued and filings accepted.** The provisions in AS 10.06 (Alaska Corporations Code) relating to the cancellation of certain corporate filings apply to religious corporations.

**Sec. 10.40.150. Involuntary dissolution.** (a) The commissioner, upon 60 days notice to the corporation may involuntarily dissolve a corporation formed under this chapter, for

(1) failure to file within 60 days of the close of the calendar year the report mentioned in AS 10.40.105;

(2) failure to comply with AS 10.40.130(a); and

(3) failure for six months to pay any fee or penalty required by this chapter.

(b) Before dissolving a corporation under (a) of this section, the commissioner shall give the corporation written notice of the pending dissolution by mailing the notice to the corporation. The commissioner shall mail the notice and any subsequent certificate of dissolution to the corporation in the same manner as required for notices and certificates of involuntary dissolution under AS 10.06.633(i).

## CHAPTER 45. PROFESSIONAL CORPORATION ACT

### Section

- 10. Incorporation
- 20. Rendering professional service and charging fees
- 30. Who may render professional service
- 40. Prohibition against engaging in business
- 50. Issuance of shares
- 60. Qualifications of director, officer, or shareholder
- 70. Management by directors permitted; authority of officers and shareholders
- 80. Transfer of shares
- 90. Voting by proxy
- 100. Voting trust prohibited
- 110. Holding stock, merging or consolidating with another professional corporation
- 120. Corporate name
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- 133. Continuity of life
- 136. Shareholder has no power to dissolve
- 140. Professional relationship and liabilities
- 180. Authority and duty of regulatory boards not limited
- 190. Professional acts limited
- 200. Legal disqualification of corporate personnel
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**220. Shares of deceased shareholder**

**230. Determination of value of shares**

**240. Applicability of Alaska Corporations Code and Alaska Entity Transactions Act**

**500. Definitions**

**510. Short title**

**Sec. 10.45.010. Incorporation.** (a) One or more persons each of whom is licensed to render a professional service in this state may incorporate a professional corporation by filing articles of incorporation with the Department of Commerce, Community, and Economic Development. The articles shall meet the requirements of AS 10.06 (Alaska Corporations Code) and, in addition, must include

- (1) the name of the profession to be practiced by the corporation;
- (2) the names and addresses of all original shareholders, directors, and officers;
- (3) the address where the professional corporation will have its office.

(b) A certificate from the regulatory board of the profession involved certifying that each of the incorporators, directors, and shareholders is licensed to practice the profession shall be filed with the articles of incorporation.

**Sec. 10.45.020. Rendering professional service and charging fees.** A professional corporation may render one type of professional service only. It may charge fees for the services of its directors, officers, employees or agents, collect the fees, and compensate those who render the services.

**Sec. 10.45.030. Who may render professional service.** A professional corporation incorporated under this chapter may not render professional services except through the persons who are licensed within the state to render the same type of professional services as the corporation and who are its shareholders, directors, officers, employees, or agents.

**Sec. 10.45.040. Prohibition against engaging in business.** A professional corporation may not engage in business; however, it may own real and personal property necessary for or appropriate in rendering its own professional services and may invest its funds in all types of investments.

**Sec. 10.45.050. Issuance of shares.** A professional corporation may issue shares of its capital stock to persons licensed by a regulatory board of the state to render the professional service specified in the articles of incorporation, or to a revocable or joint revocable trust if a settlor of the trust is a person licensed by a regulatory board of the state to render the professional service specified in the articles of incorporation. It may not issue shares to any other person or trust.

**Sec. 10.45.060. Qualifications of director, officer, or shareholder.** A person may not be a director or officer of a professional corporation if the person is not a shareholder of that corporation. A person may not be a shareholder, director, or officer of more than one professional corporation at one time.

**Sec. 10.45.070. Management by directors permitted; authority of officers and shareholders.** (a) The management of a professional corporation shall be vested in the board of directors which shall have the continuing exclusive authority to make the management decisions necessary to the conduct of the profession for which the professional corporation is formed. The officers of the corporation, who shall be elected by the board of directors, have such power and authority to represent the board as the board from time to time expressly or impliedly grants. A shareholder does not have power to bind the corporation within the scope of the corporation's activities merely by virtue of being a shareholder.

(b) A professional corporation that has only one or two shareholders may manage its affairs by directors only, who shall be the shareholders. The one or two shareholders may fill all the general offices of the corporation.

**Sec. 10.45.080. Transfer of shares.** A shareholder of a professional corporation may sell or transfer shares in the professional corporation only to another individual licensed to render the same professional service as that for which the professional corporation was formed. The articles of incorporation may provide specifically for restraints on the alienation of shares and may require the purchase, redemption, or retirement of shares by the corporation at a price and in a manner set out in the articles. The articles may authorize the corporation's board of directors or its shareholders to adopt bylaws restraining the alienation of shares and providing for their purchase, redemption, or retirement by the corporation.

**Sec. 10.45.090. Voting by proxy.** A proxy may be given to a licensed shareholder of the same corporation to vote the shares of the professional corporation. No other person may be given a proxy.

**Sec. 10.45.100. Voting trust prohibited.** A voting trust may not be formed to vote the shares of a professional corporation.

**Sec. 10.45.110. Holding stock, merging or consolidating with another professional corporation.** A professional corporation may not hold stock in another professional corporation, or merge or consolidate with a foreign professional corporation.

**Sec. 10.45.120. Corporate name.** (a) The corporate name of a professional corporation shall contain the last name of one or more of its shareholders, unless the regulations of a particular regulating board or the ethics of a profession permit the use of a corporate name which does not include the surname of any present or former shareholder. The corporate name shall be ended by the word "Corporation," "Incorporated," or "Limited," or by the abbreviation "Corp.," "Inc.," or "Ltd.," or by the words, "a professional corporation," or by the abbreviation "P.C."

(b) The corporate name of a professional corporation must be distinguishable on the records of the Department of Commerce, Community, and Economic Development from the name of any other organized entity and from a reserved or registered name. The Department of Commerce, Community, and Economic Development may adopt regulations to implement this subsection. In this subsection, "organized entity" and "reserved or registered name" have the meanings given in AS 10.35.040.

**Sec. 10.45.130. Change or alteration of corporate name.** When a person whose name is part of a corporate name ceases to be a shareholder, the corporation shall alter its name to reflect this change; however, a professional corporation may retain the name of a retired or deceased shareholder in its corporate name if the regulations of a particular regulating board or the ethics of a profession permit it.

**Sec. 10.45.133. Continuity of life.** Unless the articles of incorporation expressly provide otherwise, a professional corporation shall continue as a separate entity independent of its shareholders for all purposes and for the period of time provided in the articles or until dissolved by a vote of two-thirds of the shareholders. A professional corporation shall continue notwithstanding the death, insanity, incompetency, conviction for felony, resignation, withdrawal, transfer of ownership of shares, retirement, or expulsion of any one or more of the shareholders, the transfer of shares to a new shareholder, or the happening of any other event that under the law of this state and under like circumstances would work a dissolution of a partnership.

**Sec. 10.45.136. Shareholder has no power to dissolve.** A shareholder of a professional corporation does not have the power to dissolve the corporation by an independent act of any kind.

**Sec. 10.45.140. Professional relationship and liabilities.** (a) The provisions of this chapter do not modify the law applicable to the relationship between a person furnishing professional service and a person receiving the service, including liability arising out of the professional service, and including any confidential relationship between the person rendering the professional service and the person receiving the service.

(b) Except as provided in (a) of this section, a shareholder of a professional corporation organized under this chapter is not individually liable for the debts of or the claims against the corporation unless the debt or claim arises as a result of a wrongful act or omission of the shareholder.

**Sec. 10.45.150 – 10.45.170. Corporate liability; personal liability of shareholders.** [Repealed, Sec. 8 ch 75 SLA 1969].

**Sec. 10.45.180. Authority and duty of regulatory boards not limited.** This chapter does not restrict or limit the authority and duty of the regulatory boards for the licensing of persons rendering professional services or for the practice of the profession that is within the jurisdiction of the boards.

**Sec. 10.45.190. Professional acts limited.** A professional corporation may not do any act that is prohibited to a person licensed to practice a profession that the professional corporation renders.

**Sec. 10.45.200. Legal disqualification of corporate personnel.** If a shareholder, director, officer, employee, or agent of a professional corporation is legally disqualified to render professional service in this state, or is elected or appointed to a public office which under law restricts or limits the rendering of professional services, that person shall sever all employment and financial interest in the professional corporation immediately. The failure of the directors or officers to require compliance with this section is sufficient ground for the forfeiture of the corporate franchise.

**Sec. 10.45.210. Disposal of shares of legally disqualified shareholder.** A professional corporation may provide in its articles of incorporation that the shares of a legally disqualified shareholder may be sold only to other shareholders or licensed persons of the same profession, or it may provide for the purchase, redemption, or retirement of the shares by the corporation out of capital as well as surplus funds and without regard to the impairment of its capital. If there is no provision for the disposal of the shares and the legally disqualified shareholder has not disposed of the shares as required under AS 10.45.200, the corporation shall purchase, redeem, or retire the shares out of capital as well as surplus funds without regard to the impairment of its capital within 30 days after the disqualification occurs.

**Sec. 10.45.220. Shares of deceased shareholder.** (a) A professional corporation may provide for the disposal of the shares of a deceased shareholder in its articles of incorporation or bylaws, or its shareholders may provide for their disposal by private agreement. If there is no provision or private agreement, the shares shall first be offered for sale to the remaining shareholders by the personal representative of the deceased shareholder's estate at a price not to exceed their book value, and, if not sold, then offered and sold to any licensed person of the same profession as the corporation without obtaining the approval of the remaining shareholders. If the shares are not disposed of within six months from the date of the death of the shareholder, the corporation shall call a special meeting of its shareholders and shall decide by a majority vote of the remaining shareholders whether or not the corporation purchases, redeems, or retires the shares at book value or lesser price if agreed, or files for a dissolution of the corporation. At the special meeting the shares of the deceased shareholder may not be voted on or counted for any purpose, unless the deceased shareholder was the sole shareholder.

(b) If there is only one shareholder and the shares held by the deceased shareholder are not disposed of within six months after death, the legal representative, legatees or distributees of the deceased shareholder shall either

(1) liquidate the professional corporation; or

(2) amend its articles of incorporation so that the professional corporation may continue in existence as a business corporation under AS 10.06.

**Sec. 10.45.230. Determination of value of shares.** If the articles of incorporation or bylaws of a professional corporation do not provide a price or method of determining a price at which the corporation may purchase, redeem, or retire the shares, or that its shareholders may purchase the shares of a deceased shareholder or a shareholder no longer qualified to own shares in the corporation, then the price for the shares shall be the book value as of the end of the month preceding the death or disqualification of the shareholder. Book value shall be determined from the books and records of the corporation in accordance with the regular method of accounting used by the corporation.

**Sec. 10.45.240. Applicability of Alaska Corporations Code and Alaska Entity Transactions Act.** The Alaska Corporations Code, including the provision in AS 10.06.595 that allows, with exceptions, corporations to enter into mergers, interest exchanges, conversions, and domestications under AS 10.55 (Alaska Entity Transactions Act), is applicable to professional corporations, and they enjoy the powers and privileges and are subject to the duties, restrictions, and liabilities of other corporations, except when inconsistent with this chapter. This chapter takes precedence in the event of a conflict with provisions of the Alaska Corporations Code or other laws.

**Sec. 10.45.250.** *[Renumbered as AS 10.45.500.]*

**Sec. 10.45.260.** *[Renumbered as AS 10.45.510.]*

**Sec. 10.45.500. Definitions.** In this chapter

(1) "employee" means a licensed person employed by a professional corporation to render the type of professional service for which the corporation was organized;

(2) "professional corporation" means a corporation organized under this chapter to render a professional service;

(3) "professional person" means a person licensed to render a professional service;

(4) "professional service" means a type of highly skilled, technical, and specialized personal service rendered to the public by persons licensed by the state;

(5) "regulatory board" means an agency of the state having jurisdiction to grant a license to render professional service.

**Sec. 10.45.510. Short title.** This chapter may be cited as the Professional Corporation Act.

**CHAPTER 50.**  
**ALASKA REVISED LIMITED LIABILITY COMPANY ACT**

**Article**

1. Purposes and Activities (§§ 10.50.010, 10.50.015)
2. Name; Registered Office and Agent; Service of Process (§§ 10.50.020 – 10.50.065)
3. Organization and Duration (§§ 10.50.070 – 10.50.095)
4. Amendment and Restatement of Articles (§§ 10.50.100, 10.50.105)
5. Management (§§ 10.50.110 – 10.50.150)
6. Membership (§§ 10.50.155 – 10.50.225)
7. Relationship to Third Parties (§§ 10.50.250 – 10.50.265)
8. Contributions (§§ 10.50.275 – 10.50.285)
9. Distributions (§§ 10.50.290 – 10.50.348)
10. Ownership and Transfer of Property; Creditors (§§ 10.50.350 – 10.50.390)
11. Dissolution (§§ 10.50.400 – 10.50.440)
12. Merger, Consolidation, and Conversion (§§ 10.50.500 – 10.50.590)
13. Foreign Limited Liability Companies (§§ 10.50.600 – 10.50.720)
14. Court Actions By and Against Limited Liability Companies (§§ 10.50.730, 10.50.735)
15. Biennial Report (§§ 10.50.750 – 10.50.765)
16. Miscellaneous Provisions (§§ 10.50.800 – 10.50.890)
17. General Provisions (§§ 10.50.900 – 10.50.995)

**ARTICLE 1.**  
**PURPOSES AND ACTIVITIES**

**Section**

10. Authorized purposes
15. Compliance with other laws

**Sec. 10.50.010. Authorized purposes.** A limited liability company may be organized under this chapter for any lawful purpose, including the rendering of a professional service.

**Sec. 10.50.015. Compliance with other laws.** If an activity of a limited liability company or the purpose for which a limited liability company is organized is subject to another provision of law, the company shall also comply with the other provision of law.

**ARTICLE 2.**  
**NAME; REGISTERED OFFICE AND AGENT; SERVICE OF PROCESS**

**Section**

20. Limited liability company name
25. Distinguishable name
30. Right to reserve name
35. Application to reserve company name
38. Transfer of reserved name
40. Registration of company name
43. Exclusive right to use of name; use of nondistinguishable name
48. Procedure for registration of company name
50. Duration of name registration
53. Renewal of name registration
55. Registered office and registered agent
60. Change of registered office or agent by company
63. Registered agent's change of office location or resignation
65. Service on company

**Sec. 10.50.020. Limited liability company name.** (a) The name of a limited liability company stated in the company's articles of organization must contain the words "limited liability company" or the abbreviation "L.L.C.," or "LLC". The word "limited" may be abbreviated as "Ltd.," and the word "company" may be abbreviated as "Co."

(b) The name of a city, borough, or village may be used in a limited liability company name; however, the name may not contain the word "city," "borough," or "village" or otherwise imply that the company is a municipality.

(c) A person may not adopt a name that contains the words "limited liability company" unless the person is organized under this chapter or is registered as a foreign limited liability company under this chapter.

**Sec. 10.50.025. Distinguishable name.** The name of a limited liability company must be distinguishable on the records of the department from the name of any other organized entity and from a reserved or registered name. The department may adopt regulations to implement this section. In this section, "organized entity" and "reserved or registered name" have the meanings given in AS 10.35.040.

**Sec. 10.50.030. Right to reserve name.** The exclusive right to use a name may be reserved by a

- (1) person intending to organize a limited liability company and to adopt the name;
- (2) person intending to organize a foreign limited liability company and to register under this chapter;
- (3) limited liability company, or a foreign limited liability company registered under this chapter, that intends to change its name; or
- (4) foreign limited liability company that intends to register under this chapter and to adopt the name.

**Sec. 10.50.035. Application to reserve company name.** Reservation of a name under AS 10.50.030 is made by filing an application with the department. If the department finds that the name is available for use by a limited liability company and is distinguishable on the records of the department under AS 10.50.025, the department shall reserve it for the exclusive use of the applicant for a period of 120 days.

**Sec. 10.50.038. Transfer of reserved name.** The holder of a name reserved under AS 10.50.030 may transfer the right to the exclusive use of the name to another person by filing a notice of transfer with the department, signed by the holder of the name, and specifying the name and address of the transferee.

**Sec. 10.50.040. Registration of company name.** A limited liability company or a foreign limited liability company may register its name if the name is distinguishable on the records of the department under AS 10.50.025.

**Sec. 10.50.043. Exclusive right to use of name; use of nondistinguishable name.** Organization or registration under this chapter, or registration of a name under this chapter, gives the person who has organized or registered under this chapter, or registered a name under this chapter, exclusive right to the use of the name. The person may enjoin the use of a name that is not distinguishable from the name to which the person has the exclusive right and the person has a cause of action for damages against a person who uses a name that is not distinguishable from the name to which the person has the exclusive right.

**Sec. 10.50.048. Procedure for registration of company name.** Registration of a name under AS 10.50.040 is made by filing with the department

- (1) a signed application for registration setting out the name of the company, the state or territory under the laws of which it is organized, the date of organization, a statement that it is conducting affairs, and a brief statement of its principal activities; and
- (2) proof from the jurisdiction where the company is organized that indicates that the company is organized in that jurisdiction if the company is a foreign limited liability company.

**Sec. 10.50.050. Duration of name registration.** The registration of a name under AS 10.50.040 is effective until the close of the calendar year in which the application for registration is filed.

**Sec. 10.50.053. Renewal of name registration.** (a) The registration of a name under AS 10.50.040 may be renewed each year by

- (1) filing an application for renewal setting out the facts required in an original application for registration;
- (2) filing proof of organization required for an original registration; and
- (3) paying a fee established by the department.

(b) An application for renewal shall be filed between October 1 and December 31 in each year. The renewal extends the registration for the following calendar year.

**Sec. 10.50.055. Registered office and registered agent.** A limited liability company shall continuously maintain in this state a registered agent and a registered office. The registered office may be the same as the office of the company. The registered agent may be either an individual resident of this state whose business office is the same as the registered office, or a domestic or foreign corporation authorized to transact business in this state whose business office is the same as the registered office.

**Sec. 10.50.060. Change of registered office or agent by company.** (a) A limited liability company may change its registered office, agent, or both, by filing with the department a signed statement that includes

- (1) the name of the company;
- (2) the address of its registered office;
- (3) the address of its new registered office if the registered office is to be changed;
- (4) the name of its registered agent;
- (5) the name of its new registered agent if the registered agent is to be changed; and
- (6) a statement that the change is authorized by the company's manager, or, if the company is not managed by a manager, by the members.

(b) If the department finds that the statement complies with this chapter, the department shall file it in the department's office. The change becomes effective when the statement is filed.

**Sec. 10.50.063. Registered agent's change of office location or resignation.** (a) A registered agent of a limited liability company may change the location of the agent's office from one address to another in this state. The agent may change the registered office for each company for which the person is acting as registered agent by filing in the department a statement setting out the name of the agent, the address of the agent's office before change, the address to which the office is changed, and a list of companies for which the person is the registered agent. The statement shall be executed by the registered agent in the individual name of the agent or, if the agent is a corporation, it shall be executed by its president or a vice-president. The statement shall be delivered to the department and the limited liability company and, if the department finds that the statement complies with this chapter, the department shall file it. The change becomes effective when the statement is filed.

(b) A registered agent may resign by filing a written notice and an exact copy of the notice with the department. The written notice of resignation must set out the latest address of the principal office of the company and the name, address, and title of the manager, or, if the company is managed by its members, the names and addresses of the members of the company known by the agent. The department shall immediately mail a copy of the notice to the company at its principal office. The resignation becomes effective 30 days after the filing of the written notice, unless the company sooner appoints a successor registered agent, as provided in AS 10.50.060.

**Sec. 10.50.065. Service on company.** (a) The registered agent of a limited liability company is an agent upon whom process, notice, or demand required or permitted by law to be served upon the company may be served.

(b) If a limited liability company fails to appoint or maintain a registered agent in this state, or if its registered agent cannot, with reasonable diligence, be found at the registered office, the commissioner is an agent of the company upon whom the process, notice, or demand may be served. A person may serve the commissioner under this subsection by

(1) serving on the commissioner or the designee of the commissioner a copy of the process, notice, or demand, with any papers required by law to be delivered in connection with the service, and a fee established by the department by regulation;

(2) sending to the company being served by certified mail a notice that service has been made on the commissioner under this subsection and a copy of the process, notice, or demand and accompanying papers; notice to the company shall be sent to

(A) the address of the last registered office of the company as shown by the records on file in the department; and

(B) the address, the use of which the person initiating the proceedings knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice; and

(3) filing with the appropriate court or other body, as part of the return of service, the return receipt of mailing and an affidavit of the person initiating the proceedings that this section has been complied with.

(c) The commissioner shall keep a record of processes, notices, and demands served upon the commissioner under this section.

(d) This section does not affect the right to serve process, notice, or demand required or permitted by law to be served upon a company in any other manner permitted.

### **ARTICLE 3. ORGANIZATION AND DURATION**

#### **Section**

**70. Organizers**

**75. Contents of articles of organization**

**78. Disclosure of company activities**

**80. Effective date of organization**

## **90. Conclusive evidence of compliance**

### **95. Operating agreement**

**Sec. 10.50.070. Organizers.** One or more persons may organize a limited liability company by signing articles of organization and delivering the signed articles to the department for filing. A person who organizes a limited liability company may be a person who is not a member of the company when the company is organized or after the company is organized.

**Sec. 10.50.075. Contents of articles of organization.** The articles of organization of a limited liability company must state

- (1) the name of the company;
- (2) the purpose for which the company is organized, which may be stated to be, or to include, the conduct of any or all lawful affairs for which a limited liability company may be organized under this chapter;
- (3) the mailing address of the company's registered office and the name of the company's registered agent;
- (4) [Repealed, Sec. 23 ch 78 SLA 1997].
- (5) if applicable, that the company will be managed by a manager; and
- (6) any other provision for the regulation of the internal affairs of the company that is consistent with this chapter and the laws of this state if the persons organizing the company elect to include the provision in the articles of organization.

**Sec. 10.50.078. Disclosure of company activities.** The organizers delivering articles of organization under AS 10.50.070 shall deliver with the articles a separate statement of the codes from the identification codes established under AS 10.06.870 that most closely describe the activities in which the company will initially engage.

**Sec. 10.50.080. Effective date of organization.** A limited liability company is organized when the articles of organization for the company that conform to the filing requirements of this chapter are delivered to the department for filing under AS 10.50.820.

**Sec. 10.50.085. Election of duration.** [Repealed, Sec. 23 ch 78 SLA 1997].

**Sec. 10.50.090. Conclusive evidence of compliance.** A copy of the articles of organization that is stamped "filed" and marked with the filing date is conclusive evidence that the organizers of the limited liability company have complied with all conditions precedent required to be performed by the organizers and that the company has been organized under this chapter.

**Sec. 10.50.095. Operating agreement.** The members of a limited liability company may adopt an operating agreement for the company and may amend and repeal the agreement. The articles of organization may restrict or eliminate the power of the members to adopt, amend, or repeal an operating agreement.

## **ARTICLE 4. AMENDMENT AND RESTATEMENT OF ARTICLES**

### **Sections**

#### **100. Amendment of articles**

#### **105. Restatement of articles**

**Sec. 10.50.100. Amendment of articles.** (a) A limited liability company may amend its articles of organization in any respect if the articles as amended contain only the provisions that are required or permitted by this chapter to be included in the original articles of organization at the time of the amendment.

(b) A limited liability company may amend its articles of organization by filing articles of amendment with the department. The articles of amendment must state the

- (1) name of the company;
- (2) date the articles of organization were filed; and
- (3) amendment adopted by the company.

**Sec. 10.50.105. Restatement of articles.** A limited liability company may restate its articles of organization at any time. The company shall file its restated articles with the department. The restated articles of organization must be specifically designated as restated articles in the title to the restated articles and must state, either in the title or in an introductory paragraph, the

- (1) company's present and, if the name is changed, all of the company's former names; and
- (2) date of the filing of the company's original articles of organization.

## **ARTICLE 5. MANAGEMENT**

### **Section**

#### **110. Management generally**

#### **115. Appointment, removal, and replacement of managers**

#### **120. Manager eligibility**

#### **125. Tenure of manager**

#### **130. Limitation of member fiduciary duty**

#### **135. Duty of care**

#### **140. Conflicts of interest**

#### **145. Loans to managers, managing members, and employees**

#### **148. Indemnification of managers, managing members, employees, and agents; insurance**

#### **150. Authorization of company affairs**

**Sec. 10.50.110. Management generally.** (a) Except as otherwise provided in the company's articles of organization, the members of a limited liability company manage the affairs and make the decisions of the company. Management by the members is subject to a provision in an operating agreement or this chapter limiting or increasing the management rights and duties of the members, including limits or increases placed on a class of members or an individual member.

(b) If a limited liability company is managed by a manager, the manager has the exclusive power to manage the affairs of the company to the extent authorized by the operating agreement.

**Sec. 10.50.115. Appointment, removal, and replacement of managers.** Except as otherwise provided in an operating agreement of a limited liability company, a manager of the company may not be appointed, removed, or replaced, unless more than one-half of all of the members of the company authorize the appointment, removal, or replacement.

**Sec. 10.50.120. Manager eligibility.** Unless otherwise provided in an operating agreement of the company, a manager of a limited liability company may be a person who is not an individual or a member of the company. A company may have more than one manager.

**Sec. 10.50.125. Tenure of manager.** (a) Unless otherwise provided in an operating agreement of the company, a manager of a limited liability company holds office until the manager's successor is elected and qualified, unless the manager resigns or is removed earlier.

(b) A manager may not resign as manager of a limited liability company except at the time or upon the happening of events specified in the operating agreement of the company. An operating agreement may provide that a manager does not have the right to resign as a manager of a limited liability company. Notwithstanding that an operating agreement provides that a manager does not have the right to resign as a manager of a limited liability company, a manager may resign as a manager of a limited liability company at any time by giving notice to the members and any other managers. If the resignation of a manager violates the operating agreement of the company, in addition to any remedy otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the operating agreement and may offset the damages against the amount otherwise distributable to the resigning manager. If the manager was the sole manager and if, within 90 days after the resignation, the members fail to agree on the appointment of a new manager, then each member shall have a say in the management of the company that is equal to the proportion of the member's capital account in the company.

**Sec. 10.50.130. Limitation of member fiduciary duty.** Unless otherwise provided in an operating agreement of the company, if a person is a member of a limited liability company that is managed by a manager and if the person is not a manager, the person does not have the fiduciary duty of a manager to the company or to the other members of the company when the person acts solely in the capacity of a member.

**Sec. 10.50.135. Duty of care.** (a) A person who is a manager or a managing member of a limited liability company shall perform the duties of management in good faith, in a manner the person reasonably believes to be in the best interests of the company, and with the care, including reasonable inquiry, that an ordinarily prudent person in a like position would use under similar circumstances. Except as provided in (b) of this section, the person is

entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by

(1) an employee of the company whom the person reasonably believes to be reliable and competent in the matters presented; or

(2) counsel, public accountants, or other professionals or experts as to matters that the person reasonably believes to be within the professional's or expert's competence.

(b) A person is not acting in good faith under (a) of this section if the person has knowledge concerning the matter in question that makes reliance otherwise permitted by (a) of this section unwarranted.

**Sec. 10.50.140. Conflicts of interest.** (a) A contract or other transaction between a limited liability company and a manager or managing member of a limited liability company, or between a limited liability company and a limited liability company, foreign limited liability company, corporation, firm, or association in which a manager or managing member of the company has a material financial interest, is not void or voidable because the manager or managing member or the other company, corporation, firm, or association are parties or because the manager or managing member is present at the meeting that authorizes, approves, or ratifies the contract or transaction, if the material facts as to the transaction and as to the interest of the manager or managing member are fully disclosed or known to the members and the contract or transaction is approved by the members in good faith, with the interested manager or managing member not being entitled to vote.

(b) The fact that a manager or managing member of a limited liability company is a manager or managing member of another entity involved in the transaction does not alone constitute a material financial interest within the meaning of this section. A manager or managing member is not interested within the meaning of this section in a decision fixing the compensation of another manager or managing member as a manager or managing member of the company, notwithstanding the fact that the first manager or managing member is also receiving compensation from the company.

(c) A contract or other transaction between a manager or managing member and a limited liability company or association of which one or more managers or managing members of the company are managers or managing members is not void or voidable because the managers or managing members are present at the meeting that authorizes, approves, or ratifies the contract or transaction, if the material facts of the transaction and the manager's or managing member's other management position are fully disclosed or known to the members and the members authorize, approve, or ratify the contract or transaction in good faith by a sufficient vote without counting the vote of the common manager or managing member or the contract or transaction is approved by the members in good faith. This subsection does not apply to contracts or transactions covered by (a) of this section.

(d) Nothing in this section affects the prohibitions or restraints imposed by AS 45.50.562 - 45.50.596.

**Sec. 10.50.145. Loans to managers, managing members, and employees.** (a) A loan may not be extended by a limited liability company to an employee without authorization by the company's managers or managing members. A loan may not be extended to a manager or a managing member of a limited liability company without the approval of two-thirds of the company's members. An employee who is also a manager or managing member is considered a manager or managing member for purposes of this section. A member is not disqualified from voting on a loan to a member as a manager or managing member because of personal interest.

(b) A loan to a manager, managing member, or employee and a loan secured by the limited liability company interests of the company may not be made unless the loan would be permissible as a distribution under AS 10.50.290 - 10.50.345. A loan under this subsection impairs the retained earnings or paid-in capital accounts to the extent of the loan.

(c) For purposes of this section, a loan may consist of cash, securities, or personal or real property.

(d) If a limited liability company acts as a guarantor on a loan to a manager, managing member, or employee, the guarantee is treated as a loan under this section.

(e) A manager, managing member, or employee of an affiliated limited liability company is a manager, managing member, or employee of the lending company for purposes of this section.

(f) A loan is to be judged by the duties of managers and managing members to act in good faith in a manner reasonably believed to be in the best interests of the company and with the care, including reasonable inquiry, that an ordinarily prudent person in a like position would use under similar circumstances.

**Sec. 10.50.148. Indemnification of managers, managing members, employees, and agents; insurance.**

(a) A limited liability company may indemnify a person who was, is, or is threatened to be made a party to a completed, pending, or threatened action or proceeding, whether civil, criminal, administrative, or investigative, other than an action by or in the right of the company, by reason of the fact that the person is or was a manager, managing member, employee, or agent of the company, or is or was serving at the request of the company as a manager, managing member, employee, or agent of another limited liability company, partnership, joint venture, trust, or other enterprise. Indemnification may include reimbursement of expenses, attorney fees, judgments, fines,

and amounts paid in settlement actually and reasonably incurred by the person in connection with the action or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the company, and, with respect to a criminal action or proceeding, the person had no reasonable cause to believe the conduct was unlawful. The termination of an action or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, does not create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the company, and, with respect to a criminal action or proceeding, the person had reasonable cause to believe that the conduct was unlawful.

(b) A limited liability company may indemnify a person who was, is, or is threatened to be made a party to a completed, pending, or threatened action by or in the right of the company to procure a judgment in its favor by reason of the fact that the person is or was a manager, managing member, employee, or agent of the company, or is or was serving at the request of the company as a manager, managing member, employee, or agent of another limited liability company, partnership, joint venture, trust, or other enterprise. Indemnification may include reimbursement for expenses and attorney fees actually and reasonably incurred by the person in connection with the defense or settlement of the action if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the company. Indemnification may not be made in respect of any claim, issue, or matter as to which the person has been adjudged to be liable for negligence or misconduct in the performance of the person's duty to the company except to the extent that the court in which the action was brought determines upon application that, despite the adjudication of liability, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for expenses that the court considers proper.

(c) To the extent that a manager, managing member, employee, or agent of a limited liability company has been successful on the merits or otherwise in defense of an action or proceeding referred to in (a) or (b) of this section, or in defense of a claim, issue, or matter in the action or proceeding, the manager, managing member, employee, or agent shall be indemnified against expenses and attorney fees actually and reasonably incurred in connection with the defense.

(d) Unless otherwise ordered by a court, indemnification under (a) or (b) of this section may only be made by a company upon a determination that indemnification of the manager, managing member, employee, or agent is proper in the circumstances because the manager, managing member, employee, or agent has met the applicable standard of conduct set out in (a) and (b) of this section. The determination shall be made by the members.

(e) The company may pay or reimburse the reasonable expenses incurred in defending a civil or criminal action or proceeding in advance of the final disposition in the manner provided in (d) of this section if

(1) in the case of a manager or managing member, the manager or managing member furnishes the company with a written affirmation of a good faith belief that the standard of conduct described in AS 10.50.135(a) has been met;

(2) the manager, managing member, employee, or agent furnishes the company a written unlimited general undertaking, executed personally or on behalf of the individual, to repay the advance if it is ultimately determined that an applicable standard of conduct was not met; and

(3) a determination is made that the facts then known to those making the determination would not preclude indemnification under this chapter.

(f) The indemnification provided by this section is not exclusive of any other rights to which a person seeking indemnification may be entitled. The right to indemnification continues as to a person who has ceased to be a manager, managing member, employee, or agent, and inures to the benefit of the heirs, executors, and administrators of the person.

(g) A limited liability company may purchase and maintain insurance on behalf of a person who is or was a manager, managing member, employee, or agent of the company, or is or was serving at the request of the company as a manager, managing member, employee, or agent of another limited liability company, partnership, joint venture, trust, or other enterprise against any liability asserted against the person and incurred by the person in that capacity, or arising out of that status, whether or not the company has the power to indemnify the person against the liability under the provisions of this section.

**Sec. 10.50.150. Authorization of company affairs.** (a) Unless otherwise provided in an operating agreement of the company, the company's articles of organization, or by this chapter, if the company is not managed by a manager, the consent of more than one-half of all of the members of a limited liability company is required to decide the affairs of the company.

(b) Unless otherwise provided in an operating agreement of the company or by this chapter, the consent of more than one-half of the number of managers of a limited liability company is required to decide the affairs of the company.

(c) Notwithstanding (a) and (b) of this section, and unless otherwise provided in an operating agreement of the company or in the company's articles of organization, the written consent of all of the members of a limited liability company is required to

- (1) amend the articles of organization;
- (2) amend an operating agreement of the company; or
- (3) authorize a manager or member to perform an act on behalf of the company that contravenes an operating agreement of the company, including an act that contravenes a provision of the operating agreement that expressly limits the purposes, affairs, or conduct of the affairs of the company.
- (d) [Repealed, Sec. 4 ch 52 SLA 2007].

## **ARTICLE 6. MEMBERSHIP**

### **Section**

#### **155. Membership requirements**

#### **160. Effective date of admission**

#### **165. Authorization for assignee to become member**

#### **170. Rights, powers, and liabilities of assignee who becomes a member**

#### **180. Rights of assignor when assignee becomes a member**

#### **185. Resignation of member**

#### **205. Removal of member**

#### **210. Effect of death or incompetency on membership**

#### **215. Termination of membership held by trust, trustee, or estate**

#### **220. Termination on dissolution of member**

#### **225. Other events terminating membership**

**Sec. 10.50.155. Membership requirements.** (a) A person may become a member in a limited liability company if the person acquires a limited liability company interest

(1) directly from the limited liability company

(A) in compliance with an operating agreement of the company; or

(B) with the written consent of all of the members of the company if an operating agreement of the company does not provide for acquiring an interest directly from the company; or

(2) by assignment of the interest by a company member in compliance with AS 10.50.165.

(b) A limited liability company must have one or more members.

**Sec. 10.50.160. Effective date of admission.** The effective date of the admission of a member to a limited liability company is the later of the date

(1) when the company is organized;

(2) established in an operating agreement of the company; or

(3) when the person's admission is reflected in the records of the company if an operating agreement of the company does not establish an effective date.

**Sec. 10.50.165. Authorization for assignee to become member.** (a) Unless otherwise provided in an operating agreement of the company, an assignee of a limited liability company interest may not become a member unless all other members consent.

(b) An operating agreement of the company may specify the manner for evidencing the consent required by (a) of this section. If an operating agreement does not specify the manner for evidencing the consent, the consent is evidenced by a written instrument that is dated and signed by the members.

**Sec. 10.50.170. Rights, powers, and liabilities of assignee who becomes a member.** (a) An assignee who becomes a member has, to the extent assigned, the rights and powers of a member under the articles of organization, an operating agreement, and this chapter, and is subject to the restrictions and liabilities of a member under the articles of organization, an operating agreement, and this chapter.

(b) In addition to the liabilities imposed under (a) of this section, an assignee of a limited liability company interest who becomes a member of the company is liable for an obligation of the assignor to make a contribution under AS 10.50.280 that is not imposed by the articles of organization, an operating agreement, or otherwise by this chapter.

(c) Notwithstanding (a) and (b) of this section, an assignee who becomes a member is not liable for liabilities that are unknown to the assignee when the assignee becomes a member and that cannot be determined from the written records of the company maintained under AS 10.50.860.

**Sec. 10.50.180. Rights of assignor when assignee becomes a member.** Unless otherwise provided in an operating agreement of the company, when an assignee of a member's limited liability company interest becomes a member of the company with respect to the assignor's entire interest, the assignor ceases to be a member or to have the power to exercise the rights of a member.

**Sec. 10.50.185. Resignation of member.** (a) A member may not resign from a limited liability company except at the time or upon the happening of events specified in the operating agreement of the company and in accordance with the operating agreement of the company.

(b) Notwithstanding anything to the contrary under applicable law, unless an operating agreement of the company provides otherwise, a member may not resign from a limited liability company before the dissolution and winding up of the limited liability company.

(c) If the resignation of a member violates an operating agreement of the company, in addition to any remedy otherwise available under applicable law, a limited liability company may recover from the resigning member damages for breach of the operating agreement and may offset the damages against the amount otherwise distributable to the resigning member.

(d) Unless otherwise provided in an operating agreement of the company and except for termination under AS 10.50.205, after a member resigns from a limited liability company, the rights of the former member are those of an assignee.

**Sec. 10.50.190. Withdrawal before end of term or undertaking.** *[Repealed, Sec. 23 ch 78 SLA 1997.]*

**Sec. 10.50.195. Remedies for wrongful withdrawal.** *[Repealed, Sec. 23 ch 78 SLA 1997.]*

**Sec. 10.50.205. Removal of member.** (a) A person's membership in a limited liability company may not be terminated by removal except as provided by (b) or (c) of this section.

(b) Except as provided in (c) of this section, a person's membership in a limited liability company terminates if the person assigns all of the person's interest in the company and if a majority of the members who have not assigned their interests in the company authorize the removal of the person as a member.

(c) If an operating agreement of the company provides for the removal of a member with or without cause, a person's membership in a limited liability company terminates if the person is removed as a member in the manner and under the circumstances provided in the agreement.

**Sec. 10.50.210. Effect of death or incompetency on membership.** Unless otherwise provided in an operating agreement or by the written consent of all of the members at the time, the membership of a member of a limited liability company who is an individual terminates if the member dies, or if a court of competent jurisdiction enters an order adjudicating the member incompetent to manage the member's person or property.

**Sec. 10.50.215. Termination of membership held by trust, trustee, or estate.** (a) Unless otherwise provided in an operating agreement of the company or by the written consent of all of the members of the company at the time, the limited liability company membership held by a trust or trustee terminates when the trust terminates. In this subsection, "terminates" does not include the substitution of a new trustee.

(b) Unless otherwise provided in an operating agreement of the company or by the written consent of all of the members of the company at the time, the limited liability company membership held by an estate terminates when the estate's entire limited liability company interest is distributed by the fiduciary of the estate.

**Sec. 10.50.220. Termination on dissolution of member.** (a) Unless otherwise provided in an operating agreement of the company or by the written consent of all of the members of the company at the time, a limited liability company membership of a member that is a separate limited liability company terminates when the member dissolves and begins to wind up its affairs.

(b) Unless otherwise provided in an operating agreement of the company or by the written consent of all of the members of the company at the time, a limited liability company membership of a member that is a corporation terminates when the corporation is dissolved and 90 days lapse without reinstatement.

**Sec. 10.50.225. Other events terminating membership.** (a) Unless otherwise provided in writing in an operating agreement of the company or authorized by the written consent of all of the members of the company at the time, a person's membership in a limited liability company terminates when the person

- (1) makes an assignment for the benefit of creditors;
- (2) files a voluntary petition in bankruptcy;
- (3) is adjudicated a bankrupt or insolvent;

(4) files a petition or answer seeking for the person a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under law;

(5) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in a proceeding in the nature of (1) - (4) of this subsection; or

(6) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or a substantial part of the person's property.

(b) Unless otherwise provided in writing in an operating agreement of the company or consented to in writing by all of the members of the company at the time, a person's membership in a limited liability company terminates when

(1) a proceeding against the person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief is not dismissed within 120 days after the commencement of the proceeding; or

(2) an appointment, without the person's consent, of a trustee, receiver, or liquidator of the person or of all or a substantial part of the person's property is not vacated or stayed within 120 days after the appointment or after the expiration of the stay.

(c) The members of a limited liability company may provide in writing in an operating agreement that other events terminate a membership.

**Sec. 10.50.240. Effect of election.** [Repealed, Sec. 23 ch 78 SLA 1997].

## **ARTICLE 7. RELATIONSHIP TO THIRD PARTIES**

### **Section**

**250. Agency power of members and managers**

**255. Admissions and representations by members and managers**

**260. Limited liability company charged with knowledge of or notice to member or manager**

**265. Liability of members to third parties**

**Sec. 10.50.250. Agency power of members and managers.** (a) Except as provided in (b) and (c) of this section, a member of a limited liability company is an agent of the company for the purpose of conducting the company's affairs. A member's act, including the execution of an instrument in the name of the company, that appears to be performed in the usual and customary way of conducting business, binds the company, unless the member does not in fact have the authority to act for the company in the particular matter and the person with whom the member is dealing knows that the member does not have the authority to act for the company in the particular matter.

(b) If a limited liability company is managed by a manager, a member is not, solely by reason of being a member, an agent of the company.

(c) If a limited liability company is managed by a manager, a manager is an agent of a limited liability company for the purpose of conducting its affairs, and a manager's act, including the execution of an instrument in the name of the company, that appears to be performed in the usual and customary way of conducting business binds the company, unless the manager does not in fact have the authority to act for the company in the particular matter and the person with whom the manager is dealing knows that the manager does not have the authority to act for the company in the particular matter.

(d) A limited liability company manager's or member's act that does not appear to be performed in the usual and customary way of conducting business does not bind the company, unless the act is authorized by an operating agreement of the company when the act is performed or at another time.

(e) A limited liability company manager's or member's act that contravenes a restriction on the manager's or member's authority does not bind the company with regard to persons who know about the restriction.

**Sec. 10.50.255. Admissions and representations by members and managers.** (a) Except as provided in (b) of this section, an admission or representation made by a member of a limited liability company about the affairs of the company is evidence against the company if the admission or representation is within the scope of the member's authority under this chapter.

(b) If a limited liability company is managed by a manager, an admission or representation made by a

(1) manager about the affairs of the company is evidence against the company if the admission or representation is within the scope of the manager's authority under this chapter; and

(2) member, acting solely in the capacity of a member, is not evidence against the company.

**Sec. 10.50.260. Limited liability company charged with knowledge of or notice to member or manager.** (a) Except as provided in (b) and (c) of this section, and except for a fraud on the company committed by or with the consent of the member who has the knowledge or receives the notice, the following operate as notice to or knowledge of a limited liability company:

(1) notice given to a company member of a matter relating to the affairs of the company;

(2) the knowledge of a company member acting in the particular matter, whether acquired while a member or known at the time of becoming a member; and

(3) the knowledge of a company member who reasonably could and should have communicated the knowledge to a member acting in the particular matter.

(b) If the company is managed by a manager, the following operate as notice to or knowledge of a limited liability company, except for a fraud on the company committed by or with the consent of the manager who has the knowledge or receives the notice:

(1) notice given to a manager of a matter relating to the affairs of the limited liability company;

(2) the knowledge of the manager acting in the particular matter, acquired while a manager or known at the time of becoming a manager; and

(3) the knowledge of a company manager who reasonably could and should have communicated the knowledge to the manager acting in the particular matter.

(c) If the company is managed by a manager, notice to, or the knowledge of, a member of a limited liability company while the member is acting solely in the capacity of a member does not operate as notice to or knowledge of the company.

**Sec. 10.50.265. Liability of members to third parties.** A person who is a member of a limited liability company or a foreign limited liability company is not liable, solely by reason of being a member, under a judgment, decree, or order of a court, or in another manner, for a liability of the company to a third party, whether the liability arises in contract, tort, or another form, or for the acts or omissions of another member, manager, agent, or employee of the company to a third party.

## **ARTICLE 8. CONTRIBUTIONS**

### **Section**

**275. Consideration for company interests**

**280. Liability for contributions**

**285. Compromise of contribution obligation**

**Sec. 10.50.275. Consideration for company interests.** An interest in a limited liability company may be issued for property or services rendered. A member who has contributed property or services rendered may also contribute a promissory note or other obligation to contribute property or services.

**Sec. 10.50.280. Liability for contributions.** (a) Notwithstanding AS 09.25.010 - 09.25.020, a promise by a member of a limited liability company to contribute property or services to the company is not enforceable unless the promise is stated in a writing signed by the member.

(b) Unless otherwise provided in an operating agreement of the company, a member of a limited liability company is liable for performing an enforceable promise made to the company to contribute property or services, even if the member is unable to perform because of death, disability, or another reason.

(c) If a member of a limited liability company does not make the member's required contribution of property or services, the member shall, at the option of the company, contribute cash equal to that portion of value of the required contribution that has not been made.

(d) Unless otherwise provided in an operating agreement of the company, an assignor of a limited liability company interest is not released from the assignor's liability to the company under this section, even if the assignee becomes a member with respect to the assigned interest.

**Sec. 10.50.285. Compromise of contribution obligation.** Unless otherwise provided in an operating agreement of the company, the obligation of a member to make a contribution to a limited liability company may not be compromised, unless all of the other members consent to the compromise.

**ARTICLE 9.  
DISTRIBUTIONS**

**Section**

- 290. Repayment of contribution and sharing of profits and other assets**
- 295. Interim distributions under operating agreement**
- 300. Interim distributions without operating agreement**
- 305. Restrictions on distributions**
- 315. Additional restrictions in articles or agreement**
- 320. Liability of members receiving prohibited distributions; suit against members**
- 330. Time for interim distributions**
- 340. Distribution in kind**
- 345. Right to distribution**
- 348. Inapplicability to winding up and involuntary or voluntary dissolution**

**Sec. 10.50.290. Repayment of contribution and sharing of profits and other assets.** Subject to AS 10.50.305 - 10.50.320, and unless otherwise provided in an operating agreement of the company, a member of a limited liability company shall be repaid the member's contribution to capital and shares equally in the profits and other assets of the company remaining after all liabilities, including liabilities to members, are satisfied.

**Sec. 10.50.295. Interim distributions under operating agreement.** Subject to AS 10.50.305 - 10.50.320, if a limited liability company makes an interim distribution of its assets to its members, the company shall make the distribution to the members in the manner provided in an operating agreement of the company. The operating agreement of the company may authorize different interim distributions for different classes of members.

**Sec. 10.50.300. Interim distributions without operating agreement.** Subject to AS 10.50.305 - 10.50.320, if an operating agreement of the company does not provide for the interim distribution of the assets of the company, when a limited liability company makes an interim distribution of its assets, the interim distributions to each member of the company shall be equal.

**Sec. 10.50.305. Restrictions on distributions.** (a) A distribution may not be made by a limited liability company if, after giving effect to the distribution,

(1) the company would not be able to pay its debts as they become due in the usual course of conducting its affairs; or

(2) the limited liability company's assets would be less than the sum of its liabilities plus, unless otherwise provided in an operating agreement, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution that are superior to the rights of the member receiving the distribution.

(b) A limited liability company may base a determination that a distribution is not prohibited under (a) of this section on

(1) financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or

(2) a fair valuation or other method that is reasonable under the circumstances.

(c) Except as provided in (e) of this section, the effect of a distribution in accordance with (a) of this section is measured as of the date

(1) the distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(2) payment is made if the payment occurs more than 120 days after the date of authorization.

(d) If the terms of an indebtedness provide that payment of principal and interest is to be made only if and to the extent that payment of a distribution to members could then be made under this section, indebtedness of a limited liability company, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under (b) of this section.

(e) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, and the effect of the distribution is measured on the date the payment is actually made.

**Sec. 10.50.315. Additional restrictions in articles or agreement.** Nothing in this chapter prohibits additional restrictions upon the purchase or redemption of a company's own limited liability company interests by provision in the articles of organization or operating agreement of the limited liability company or in another agreement entered into by the company.

**Sec. 10.50.320. Liability of members receiving prohibited distributions; suit against members.** (a) A member of a limited liability company who receives a distribution prohibited by this chapter with knowledge of facts indicating the impropriety of the distribution is liable to the company for the benefit of all of the creditors or members entitled to institute an action under (b) of this section for the amount received by the member with interest at the legal rate on judgments until paid. The liability of the member under this subsection may not exceed the liabilities of the company owed to nonconsenting creditors at the time of the violation and the injury suffered by nonconsenting members.

(b) Suit may be brought in the name of the company to enforce the liability to

(1) creditors arising under (a) of this section for a violation of AS 10.50.305 against any or all members liable by any one or more creditors of the company whose debts or claims arose before the time of the distribution to members and who have not consented to the distribution, whether or not they have reduced their claims to judgment; or

(2) members arising under (a) of this section for a violation of AS 10.50.305 against any or all members liable by any one or more members holding preferred limited liability company interests outstanding at the time of the distribution who have not consented to the distribution, without regard to the provisions of AS 10.50.735.

(c) A member sued under this section may compel contribution from all other members liable under this section.

(d) This section does not affect the liability that a member may have under other applicable law.

**Sec. 10.50.330. Time for interim distributions.** A member of a limited liability company is entitled to receive interim distributions under AS 10.50.295 - 10.50.300 at the times or upon the happening of the events specified in an operating agreement of the company, or at the times determined by the members or managers under AS 10.50.150.

**Sec. 10.50.335. Distributions when a person ceases to be a member.** [Repealed, Sec. 23 ch 78 SLA 1997].

**Sec. 10.50.340. Distribution in kind.** (a) Unless otherwise provided in an operating agreement of the company, a member, regardless of the nature of the member's contribution, may not demand and receive a distribution from a limited liability company in a form other than cash.

(b) Unless otherwise provided in an operating agreement of the company, a limited liability company may not compel a member of the company to accept from the company a distribution of a company asset in a form other than cash to the extent that the percentage of the asset distributed to the member exceeds the percentage that the member would have shared in a cash distribution equal to the value of the asset at the time of distribution.

**Sec. 10.50.345. Right to distribution.** When a member of a limited liability company is entitled to receive a distribution from the company, the member is a creditor of the company with respect to the distribution, and is entitled to all remedies available to a creditor of the company.

**Sec. 10.50.348. Inapplicability to winding up and involuntary or voluntary dissolution.** AS 10.50.290 - 10.50.340 do not apply in a proceeding for winding up and dissolution of a limited liability company.

## ARTICLE 10. OWNERSHIP AND TRANSFER OF PROPERTY; CREDITORS

### Section

**350. Ownership of company property**

**355. Transfer of property**

**360. Recovery of property**

**370. Nature of interest in company**

**375. Assignment of interest in company**

**380. Rights of judgment creditors**

**385. Rights of estate or legal representative of deceased or incompetent member**

**390. Rights of dissolved or terminated entity**

**Sec. 10.50.350. Ownership of company property.** (a) Property transferred to or otherwise acquired by a limited liability company is the property of the company and is not the property of the members individually.

(b) A limited liability company shall acquire, hold, and convey property, including real property, in the name of the company. If a limited liability company acquires an interest in property, the company holds the title to the interest and not the members individually.

**Sec. 10.50.355. Transfer of property.** (a) Except as provided in (b) of this section, a limited liability company may transfer the property of the company if the company uses an instrument of transfer signed by a member of the company in the name of the company.

(b) If the company is managed by a manager,

(1) title to limited liability company property may be transferred by an instrument of transfer signed by a manager of the company in the name of the company; and

(2) a member, solely by reason of being a member, does not have the authority to transfer the property of the company.

**Sec. 10.50.360. Recovery of property.** A limited liability company may recover property transferred under AS 10.50.355 if the company proves that the execution of the instrument of transfer did not bind the company under AS 10.50.250, unless the property has been transferred by the initial transferee, or by a person claiming through the initial transferee, to a subsequent transferee who gives value without having notice that the person who signed the instrument of initial transfer lacked authority to bind the company.

**Sec. 10.50.370. Nature of interest in company.** A limited liability company interest is personal property.

**Sec. 10.50.375. Assignment of interest in company.** (a) A person may assign a limited liability company interest in whole or in part.

(b) The assignment of a limited liability company interest entitles the assignee to receive, to the extent assigned, only the distributions to which the assignor is entitled.

(c) The assignment of a limited liability company interest does not dissolve the company or entitle the assignee to participate in the management and affairs of the company, to become a member, or to exercise the rights of a member. Unless the assignee of the interest becomes a member with respect to the interest, the assignor continues to be a member and may exercise the rights of a member, subject to the members' right to remove the assignor under AS 10.50.205.

(d) Unless the assignee becomes a member, an assignee of a limited liability company interest is not liable as a member solely as a result of the assignment.

(e) The assignor of a limited liability company interest is not released, solely as a result of the assignment, from the assignor's liability as a member.

(f) An operating agreement may establish terms different from those in (a) - (e) of this section.

(g) Unless otherwise provided in an operating agreement of the company, the pledge of, or granting of a security interest, lien, or other encumbrance in or against, a part or all of a member's limited liability company interest is not an assignment under this section and does not terminate the membership or the rights and powers of the member.

**Sec. 10.50.380. Rights of judgment creditors.** (a) If a judgment creditor of a limited liability company member applies to a court of competent jurisdiction, the court may charge the member's limited liability company interest for payment of the unsatisfied amount of the judgment.

(b) To the extent a limited liability company interest is charged under (a) of this section, the judgment creditor has only the rights of an assignee of the member's interest.

(c) This section provides the exclusive remedy that a judgment creditor of a member or a member's assignee may use to satisfy a judgment out of the judgment debtor's interest in the limited liability company. Other remedies, including foreclosure on the member's limited liability company interest and a court order for directions, accounts, and inquiries that the debtor member might have made, are not available to the judgment creditor attempting to satisfy a judgment out of the judgment debtor's interest in the limited liability company and may not be ordered by a court.

(d) This section does not deprive a member of the benefit of an exemption applicable to the member's membership interest.

**Sec. 10.50.385. Rights of estate or legal representative of deceased or incompetent member.** If a member who is an individual dies or if a court of competent jurisdiction determines the member to be incompetent to manage the member's person or property, the member's executor, administrator, guardian, conservator, or other legal representative has the rights of an assignee of the member's interest, if the member's interest has not been terminated.

**Sec. 10.50.390. Rights of dissolved or terminated entity.** If a member who is not an individual terminates or is dissolved, the member's legal representative or successor has the rights of an assignee of the member's interest.

## ARTICLE 11. DISSOLUTION

### Section

- 400. Dissolution**
- 405. Dissolution by court**
- 408. Involuntary dissolution**
- 410. Authority to wind up**
- 415. Acts of winding up**
- 420. Agency power of manager or member after dissolution**
- 425. Distribution of assets**
- 430. Articles of dissolution**
- 435. Known claims against dissolved limited liability company**
- 440. Unknown claims against dissolved limited liability company**

**Sec. 10.50.400. Dissolution.** A limited liability company is dissolved and its affairs shall be wound up when the first of the following occurs:

- (1) at the time or on the happening of events specified for dissolution in an operating agreement of the company;
- (2) all of the members of the company consent in writing; or
- (3) the superior court enters a decree for judicial dissolution of the company under AS 10.50.405.

**Sec. 10.50.405. Dissolution by court.** On application by or for a member of a limited liability company, the superior court may order the company dissolved if the court determines that it is impossible for the company to carry on the purposes of the company.

**Sec. 10.50.408. Involuntary dissolution.** (a) A limited liability company may be dissolved involuntarily by the commissioner if

- (1) the company is delinquent six months in filing its biennial report or in paying a fee or a penalty;
- (2) the company has failed for 30 days to appoint and maintain a registered agent in the state;
- (3) the company has failed for 30 days after change of its registered office or registered agent to file in the office of the commissioner a statement of the change; or
- (4) a misrepresentation of material facts has been made in the application, report, affidavit, or other document submitted under this chapter.

(b) A limited liability company may not be dissolved under this section unless the commissioner has given the company written notice of its delinquency, failure, or misrepresentation by mail as provided by (f) of this section. If the company fails, within 60 days after the notice is sent by mail as required under this subsection, to contest the alleged delinquency, failure, or misrepresentation, it may be dissolved under (d) of this section.

(c) If, following a hearing, the commissioner determines the presence of the delinquency, failure, or misrepresentation providing grounds for involuntary dissolution under this section, the company may appeal to the superior court. The court shall either sustain the commissioner or direct the commissioner to take action the court considers proper.

(d) If a limited liability company has given cause for involuntary dissolution and has failed to correct the neglect, omission, delinquency, or noncompliance as provided in this section, and there has not been a controlling order of the superior court, the commissioner shall dissolve the company by issuing a certificate of involuntary dissolution containing a statement that the company has been dissolved, the date, and the reason for which it was dissolved. The original certificate of dissolution shall be placed in the department files and a copy of it mailed to the company as provided by (f) of this section. Upon the issuance of the certificate of involuntary dissolution, the existence of the company ceases, except as otherwise provided in this chapter, and its name shall be available to use and may be adopted by another company on a date that is six months or later after the dissolution.

(e) A company dissolved under this section may be reinstated within two years from the date of the certificate of involuntary dissolution if it is established to the satisfaction of the commissioner that in fact there was no cause for the dissolution, or if the delinquency, failure, or misrepresentation resulting in dissolution has been corrected and payment made of double the amount delinquent along with the amount the company would have paid had it not been dissolved during the two-year period. Reinstatement may not be authorized if the name of the company is not distinguishable upon the records of the department under AS 10.50.025 unless the company being reinstated amends its articles of organization to change its name to conform with the provisions of this chapter.

(f) If the mailing of an item is required by (b) or (d) of this section, the commissioner shall first mail the item by certified mail to the registered office of the limited liability company at the last known address of the registered office shown on the records of the commissioner. If the item mailed to the registered office is returned to the

department, the commissioner shall mail the item by first class mail to the registered agent of the limited liability company at the last known address of the registered agent shown on the records of the commissioner. If the item mailed to the registered agent is returned to the department, the commissioner shall mail the item by first class mail to the manager or the managing member of the limited liability company at the last known address for the manager or the managing member shown on the records of the commissioner. If the name and address of the manager or managing members are not shown on the records of the commissioner, the commissioner is not required to mail the notice to the manager or managing member. If the item mailed to the manager or managing member is returned to the department, the commissioner is not required to mail the item again. If the address shown on the records of the commissioner for a mailing after the initial certified mailing is not different from the address for the previous mailing, the commissioner is not required to mail the item to the same address, but shall mail the item to the next required addressee whose address is different from the address for the returned mailing, and, if none of the mailings required after a returned mailing has an address that is different from the address for the returned mailing, the commissioner is not required to mail the item again. In this subsection, "item" means the notice required under (b) of this section or the certificate of involuntary dissolution issued under (d) of this section.

**Sec. 10.50.410. Authority to wind up.** Unless otherwise provided in an operating agreement, the affairs of a limited liability company may be wound up by the

- (1) members or managers who have authority under AS 10.50.110 to manage the company before dissolution; or
- (2) superior court on the application of a member of the company or the member's legal representative or assignee if
  - (A) a member or manager identified in (1) of this subsection has engaged in wrongful conduct; or
  - (B) other cause is shown.

**Sec. 10.50.415. Acts of winding up.** Unless otherwise provided in an operating agreement of the company, a person winding up the affairs of a limited liability company may, in the name of, and for and on behalf of, the company,

- (1) prosecute and defend court actions;
- (2) settle and close the affairs of the company;
- (3) dispose of and transfer the property of the company;
- (4) discharge the liabilities of the company; and
- (5) distribute to the members the assets of the company.

**Sec. 10.50.420. Agency power of manager or member after dissolution.** (a) Except as provided in (b) - (d) of this section, after dissolution of a limited liability company, a member having authority to wind up the company's affairs can bind the company by an act that

- (1) is appropriate for winding up the company's affairs or completing transactions unfinished at dissolution; or
- (2) would have bound the company if the company had not been dissolved, if the other party to the transaction does not have notice of the dissolution; in this paragraph, filing the articles of dissolution is presumed to constitute notice of the dissolution.

(b) A member's act that is not binding on the limited liability company under (a) of this section binds the company if the act is otherwise authorized by the company.

(c) A member's act that violates a restriction on the member's authority does not bind the member's limited liability company with regard to a person who knows about the restriction, even if the member's act would otherwise be binding under (a) of this section or is otherwise authorized.

(d) If the company is managed by a manager, a member does not have the authority to bind the company if the member is acting solely in the capacity of a member, and a manager of the company can bind the company by an act that

- (1) is appropriate for winding up the company's affairs or completing transactions unfinished at dissolution; or
- (2) would have bound the company if the company had not been dissolved if the other party to the transaction does not have notice of the dissolution; in this paragraph, filing the articles of dissolution is presumed to constitute notice of the dissolution.

**Sec. 10.50.425. Distribution of assets.** Upon the winding up of a limited liability company, the assets of the company shall be distributed in the following manner and order of priority:

- (1) payment, or adequate provision for payment, to creditors, including, to the extent permitted by law, members who are creditors and not covered by (2) of this section, in satisfaction of the liabilities of the company;
- (2) unless otherwise provided in an operating agreement of the company, payment to members or former members in satisfaction of the company's liabilities for distributions under AS 10.50.295 - 10.50.330;

(3) unless otherwise provided in an operating agreement of the company, to members and former members in the following order of priority:

(A) for the return of their contributions; and

(B) in proportion to the members' respective rights to share in distributions from the company before dissolution.

**Sec. 10.50.430. Articles of dissolution.** After the dissolution of a limited liability company under AS 10.50.400, the limited liability company may file articles of dissolution with the department. The articles must state

(1) the name of the company;

(2) the date of filing of the company's articles of organization and of any amendments to the articles of organization;

(3) the reason for filing the articles of dissolution;

(4) the effective date, which must be a specific date, of the articles of dissolution if the articles of dissolution are not to be effective when filed; and

(5) other information determined appropriate by the members or managers filing the articles.

**Sec. 10.50.435. Known claims against dissolved limited liability company.** (a) Upon dissolution, a limited liability company may dispose of the known claims against it by filing articles of dissolution under AS 10.50.430 and following the procedures described in this section.

(b) A dissolved limited liability company shall notify its known claimants in writing of the dissolution at any time after the effective date of dissolution. The written notice must

(1) describe the information that must be included in the claim;

(2) provide a mailing address where the claim may be sent;

(3) state the deadline, which may not be fewer than 120 days after the later of the date of the written notice or the filing of articles of dissolution under AS 10.50.430, for the company to receive the claim; and

(4) state that the claim is barred if it is not received by the company by the deadline.

(c) A claim against a limited liability company is barred if a claimant

(1) who was given written notice under (b) of this section does not deliver the claim to the company by the deadline; or

(2) whose claim is rejected by the company does not begin a proceeding to enforce the claim within 90 days after the date of the rejection notice.

(d) In this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

**Sec. 10.50.440. Unknown claims against dissolved limited liability company.** (a) If a limited liability company publishes a newspaper notice in accordance with (b) of this section and files articles of dissolution under AS 10.50.430, the following claims are barred unless the claimant commences a proceeding to enforce the claim against the company within three years after the later of the publication date of the newspaper notice or the filing of the articles of dissolution:

(1) a claim by a claimant who did not receive written notice under AS 10.50.435;

(2) a claim sent within the time allowed if the company does not act on the claim;

(3) a claim that is contingent or based on an event occurring after the effective date of dissolution.

(b) The notice published under (a) of this section shall be published once in a newspaper of general circulation in the judicial district where the company's principal office, or its registered office if it does not have a principal office in this state, is located in this state, and must

(1) describe the information that must be included in a claim;

(2) provide a mailing address where the claim may be sent;

(3) state that a claim against the company is barred unless a proceeding to enforce the claim is begun within three years after the publication of the notice; and

(4) request that persons with claims against the company present them in writing to the company as provided in the notice.

(c) A claim may be enforced under this section

(1) against the company to the extent of the company's undistributed assets; or

(2) if the company's assets have been distributed in liquidation, against a member of the company to the extent of the member's pro rata share of the claim or of the assets of the company distributed to the member in liquidation, whichever is less; a member's total liability for all claims under this section may not exceed the total amount of assets of the company that are distributed to the member.

**ARTICLE 12.**  
**MERGER, CONSOLIDATION, AND CONVERSION**

**Section**

- 500. Authority for merger or consolidation**
- 510. Approval of merger or consolidation**
- 515. Filing of articles of merger or consolidation**
- 520. Contents of articles of merger or consolidation**
- 525. Execution of articles of merger or consolidation**
- 530. Equivalent to articles of dissolution**
- 535. Effective date of merger or consolidation**
- 540. Use of merger or consolidation agreement to amend or adopt operating agreement**
- 545. General effects of merger or consolidation**
- 550. Effect of merger or consolidation on property of companies**
- 555. Effect of merger or consolidation on liabilities**
- 560. Rights of creditors and liens**
- 565. Conversion at merger or consolidation**
- 580. Other transactions**
- 590. Definition**

**Sec. 10.50.500. Authority for merger or consolidation.** Unless otherwise provided in an operating agreement of the company, and subject to the law applicable to the other limited liability company, a limited liability company may merge or consolidate with or into a limited liability company or a foreign limited liability company.

**Sec. 10.50.505. Conversion of rights and interests.** *[Repealed, Sec. 29 ch 60 SLA 2013.]*

**Sec. 10.50.510. Approval of merger or consolidation.** (a) Unless otherwise provided in an operating agreement of the company, a limited liability company may not approve a proposed merger or consolidation unless the merger or consolidation is approved by all of the members of the company.

(b) A foreign limited liability company that is a party to a proposed merger or consolidation may not approve the merger or consolidation unless the merger or consolidation is approved in the manner and by the vote required by the law applicable to the foreign limited liability company.

(c) A party to a merger or consolidation under this chapter may abandon the merger or consolidation as provided in the merger or consolidation agreement.

**Sec. 10.50.515. Filing of articles of merger or consolidation.** The limited liability company that survives or results from a merger or consolidation under this chapter shall file with the department articles of merger or consolidation signed by each limited liability company that is a party to the merger or consolidation.

**Sec. 10.50.520. Contents of articles of merger or consolidation.** The articles of merger or consolidation required by AS 10.50.515 must state

- (1) the name of each limited liability company that is a party to the merger or consolidation;
- (2) the jurisdiction where each limited liability company that is a party to the merger or consolidation was organized;
- (3) that an agreement of merger or consolidation has been approved and signed by each limited liability company that is a party to the merger or consolidation;
- (4) the name of the surviving or resulting limited liability company;
- (5) the future effective date, which must be a specific date, of the merger or consolidation if the merger or consolidation is not effective when the articles are filed;
- (6) that the agreement of merger or consolidation is on file at an office of the surviving or resulting limited liability company and the address of the office;
- (7) that a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting limited liability company on request and without cost to a person holding an interest in a limited liability company that is a party to the merger or consolidation;
- (8) if the surviving or resulting limited liability company is not organized under the laws of this state, a statement that the surviving or resulting limited liability company
  - (A) agrees that it may be served with process in this state in a proceeding to enforce an obligation of a company that is a party to the merger or consolidation and that was organized under the laws of this state, and to enforce an obligation of the surviving or resulting company;

(B) appoints the department as its agent for service of process in an enforcement proceeding under (A) of this paragraph; and

(C) the address to which a copy of the process may be mailed to the surviving or resulting company by the department.

**Sec. 10.50.525. Execution of articles of merger or consolidation.** Articles of merger or consolidation shall be signed by a limited liability company that is a party to the merger or consolidation.

**Sec. 10.50.530. Equivalent to articles of dissolution.** Articles of merger or consolidation constitute articles of dissolution for a limited liability company that is not the surviving or resulting limited liability company in the merger or consolidation.

**Sec. 10.50.535. Effective date of merger or consolidation.** A merger or consolidation under AS 10.50.500 - 10.50.565 takes effect upon the later of the effective date of the filing of the articles of merger or consolidation or an effective date stated in the articles of merger or consolidation.

**Sec. 10.50.540. Use of merger or consolidation agreement to amend or adopt operating agreement.** (a) An agreement of merger or consolidation approved under AS 10.50.510 may amend an operating agreement of a limited liability company or adopt a new operating agreement for the company if the company is the surviving or resulting limited liability company in the merger or consolidation.

(b) An approved agreement of merger or consolidation may provide that the operating agreement of a limited liability company that is a party to the merger or consolidation, including a limited liability company organized for the purpose of consummating a merger or consolidation, is the operating agreement of a limited liability company that is the surviving or resulting limited liability company.

(c) An amendment to an operating agreement or the adoption of a new operating agreement under this section is effective when the merger or consolidation is effective.

(d) This subsection is not intended to limit the accomplishment of a merger or of a matter referred to in this section by other means provided for in an operating agreement or in another agreement or as otherwise permitted by law.

**Sec. 10.50.545. General effects of merger or consolidation.** (a) When a merger or consolidation becomes effective, the limited liability companies that are parties to a merger or consolidation agreement become a single limited liability company that, in the case of a merger, is the limited liability company named in the plan of merger as the surviving limited liability company, and, in the case of a consolidation, is the limited liability company named in the plan of consolidation as the resulting limited liability company.

(b) When a merger or consolidation becomes effective, a limited liability company that is a party to the merger or consolidation agreement and that is not the surviving or resulting limited liability company ceases to exist.

(c) The surviving limited liability company of a merger or the limited liability company resulting from a consolidation possesses all the rights, privileges, immunities, and powers of each limited liability company that is a party to the merger or consolidation agreement and is subject to all the restrictions, disabilities, and duties of each limited liability company that is a party to the merger or consolidation to the extent the rights, privileges, immunities, powers, franchises, restrictions, disabilities, and duties apply to the type of limited liability company that is the surviving limited liability company or the resulting limited liability company.

**Sec. 10.50.550. Effect of merger or consolidation on property of companies.** The real and personal property, the debts due, including promises to make capital contributions, other choses in action, and the other interests of the limited liability companies that are parties to a merger or consolidation belong to the surviving or resulting limited liability company without further action by the companies.

**Sec. 10.50.555. Effect of merger or consolidation on liabilities.**(a) The surviving or resulting limited liability company in a merger or consolidation is liable for the liabilities of the limited liability companies that are parties to the merger or consolidation.

(b) A claim, action, or other proceeding that exists at the time of the merger or consolidation and that is pending by or against a limited liability company that is a party to a merger or consolidation may be pursued as if the merger or consolidation had not taken place, or the surviving or resulting limited liability company may be substituted in the claim, action, or other proceeding.

**Sec. 10.50.560. Rights of creditors and liens.** The rights of creditors and liens on the property of a limited liability company that is a party to a merger or consolidation are not impaired by the merger or consolidation.

**Sec. 10.50.565. Conversion at merger or consolidation.** (a) Upon a merger or consolidation, the limited liability company interests that are to be converted or exchanged into interests, cash, obligations, or other property under the terms of a merger or consolidation agreement are converted as provided by the merger or consolidation agreement.

(b) Upon a merger or consolidation, the former holders of interests converted under (a) of this section have the rights provided in the merger or consolidation agreement or otherwise provided by law.

**Sec. 10.50.570. Conversion to limited liability company.** *[Repealed, Sec. 29 ch 60 SLA 2013.]*

**Sec. 10.50.580. Other transactions.** Under AS 10.55 (Alaska Entity Transactions Act), a limited liability company may enter into mergers, interest exchanges, conversions, and domestications that are not covered by AS 10.50.500 - 10.50.565.

**Sec. 10.50.590. Definition.** In AS 10.50.500 - 10.50.590, "limited liability company" means a limited liability company organized under this chapter or a foreign limited liability company.

## ARTICLE 13. FOREIGN LIMITED LIABILITY COMPANIES

### Section

- 600. Governing law
- 605. Registration required
- 610. Execution of registration application
- 615. Contents of registration application
- 620. Name
- 623. Change of name
- 625. Amendment of registration
- 630. Contents of amendment of registration
- 635. Registered office and registered agent of foreign company
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- 638. Filing and effective date of change
- 640. Service on foreign company
- 645. Service on commissioner
- 650. Revocation of registration
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- 655. Authority to cancel registration
- 660. Contents of application for cancellation
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- 670. Effect of cancellation of registration
- 675. Conducting affairs without registration
- 690. Liability for fees and penalties
- 700. Civil penalty
- 710. Injunctive relief
- 715. Nonliability of member or manager
- 720. Transactions not constituting conducting affairs

**Sec. 10.50.600. Governing law.** (a) Subject to the constitution of this state, the law of the state or other jurisdiction under which a foreign limited liability company is organized governs the organization and internal affairs of the company.

(b) The department may not deny registration to a foreign limited liability company because of differences between the law of this state and the law of the state or other jurisdiction under which the foreign limited liability company is organized.

**Sec. 10.50.605. Registration required.** Before conducting affairs in this state, a foreign limited liability company shall register with the department. To register, the company shall deliver to the department an application for registration as a foreign limited liability company.

**Sec. 10.50.610. Execution of registration application.** An application for registration filed by a foreign limited liability company under AS 10.50.605 shall be signed by a person who is authorized by the law of the state or other jurisdiction where the company was organized to sign the application.

**Sec. 10.50.615. Contents of registration application.** (a) An application for the registration of a foreign limited liability company must state

(1) the name of the foreign limited liability company and, if different, the name the company proposes to use in this state;

(2) the state or other jurisdiction where the company was organized, and date of its organization;

(3) the name and address of the company's registered agent;

(4) that the department is appointed the agent of the company for service of process if the foreign limited liability company fails to appoint or maintain a registered agent under AS 10.50.635;

(5) the address of the office required by the state or other jurisdiction of the company's organization to be maintained in that state or other jurisdiction, or, if the state or other jurisdiction does not require an office to be maintained in that state or other jurisdiction, the principal office of the company;

(6) the purpose the company proposes to pursue in the conduct of its affairs in this state and the codes from the identification code established under AS 10.06.870 that most closely describe the activities in which the company will engage in this state;

(7) the names and addresses of the managers of the company, or, if the company is not managed by a manager, the names and addresses of the members of the company;

(8) the name and address of each person owning at least a five percent interest in the company and the percentage of interest owned by that person in the company; and

(9) that the company is a foreign limited liability company.

(b) In addition to the information required by (a) of this section, an application must include proof from the jurisdiction where the company was organized that indicates that the company was organized in that jurisdiction.

**Sec. 10.50.620. Name.** The department may not file the application for registration of a foreign limited liability company unless the name of the company satisfies the requirements of AS 10.50.020 - 10.50.025. If the name under which a foreign limited liability is organized in the state or other jurisdiction of its organization does not satisfy the requirements of AS 10.50.020 - 10.50.025, the company may register under AS 10.50.605 if the company uses an assumed name that is available to the company under this chapter and that satisfies the requirements of AS 10.50.020 - 10.50.025.

**Sec. 10.50.623. Change of name.** If a foreign limited liability company that is registered under this chapter changes its name to one under which it may not register under this chapter, the registration of the company is suspended and the company may not conduct affairs in this state until it has changed its name to a name available to it under the laws of this state.

**Sec. 10.50.625. Amendment of registration.** A foreign limited liability company may amend its registration by filing an amendment of registration with the department that is signed by a person who has the authority to sign it under the law of the state or other jurisdiction of the company's organization.

**Sec. 10.50.630. Contents of amendment of registration.** (a) The amendment of registration filed by a foreign limited liability company must state the

(1) name of the company;

(2) date the original application for registration was filed; and

(3) amendment.

(b) The application for registration may be amended in any way if the application for registration as amended contains only provisions that this chapter allows to be contained in an application for registration at the time of amendment.

**Sec. 10.50.635. Registered office and registered agent of foreign company.** A foreign limited liability company registered under this chapter shall have and continuously maintain in the state a registered

(1) office that may be, but need not be, the same as its office in this state; and

(2) agent, who may be either an individual resident in this state whose business office is identical to the registered office, a corporation organized under AS 10.06, or a foreign corporation authorized to transact business in this state, that has a business office identical to the registered office.

**Sec. 10.50.637. Change of registered office or registered agent of foreign company.** A foreign limited liability company registered under this chapter may change its registered office or change its registered agent, or both, upon filing with the department a signed statement setting out

(1) the name of the company;

(2) the address of its registered office;

(3) the address of the new registered office if the address of its registered office is to be changed;

- (4) the name of its registered agent;
- (5) the name of its new registered agent if its registered agent is to be changed;
- (6) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and
- (7) that the change is authorized by the company.

**Sec. 10.50.638. Filing and effective date of change.** If the department finds that the statement conforms to the provisions of this chapter, the department shall file the statement, and upon the filing, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, becomes effective.

**Sec. 10.50.640. Service on foreign company.** The registered agent appointed by a foreign limited liability company registered under this chapter shall be an agent of the company upon whom process, notice, or demand required or permitted by law to be served upon the company may be served.

**Sec. 10.50.645. Service on commissioner.** When a foreign limited liability company that is registered under this chapter, or that conducts affairs in this state without being registered under this chapter, fails to appoint or maintain a registered agent in this state, when a registered agent cannot with reasonable diligence be found at the registered office, or when the registration of a foreign company is suspended or revoked, the commissioner is an agent upon whom process, notice, or demand may be served. Service is made upon the commissioner as provided in AS 10.50.065(b).

**Sec. 10.50.650. Revocation of registration.** (a) The registration of a foreign limited liability company authorizing the company to conduct affairs in this state may be revoked by the commissioner if

- (1) the company fails to file its biennial report within the time established by this chapter, or fails to pay fees or penalties established by this chapter when they are due and payable;
- (2) the company fails to appoint and maintain a registered agent in this state;
- (3) the company fails, after change of its registered office or registered agent, to file with the commissioner a statement of the change as required by this chapter; or
- (4) a misrepresentation of a material matter has been made in an application, report, affidavit, or other document submitted under this chapter.

(b) The commissioner may not revoke the registration of a foreign limited liability company unless the

- (1) commissioner has given the company at least 60 days notice by certified mail addressed to its registered agent at its registered office; and
- (2) company fails before revocation to file the report, pay the fees or penalties, file the required statement of change of registered agent or registered office, or correct the misrepresentation.

(c) Upon revoking a registration, the commissioner shall

- (1) issue a certificate of revocation in duplicate;
- (2) file one of the certificates in the commissioner's office; and
- (3) mail one of the certificates of revocation to the limited liability company at its registered office.

(d) Upon the issuance of the certificate of revocation, the authority of the limited liability company to conduct affairs in this state ceases.

**Sec. 10.50.653. Appeal from revocation of registration.** If the commissioner revokes the registration of a foreign limited liability company to conduct affairs in this state under this chapter, the company may appeal to the superior court. The court shall either sustain the action of the commissioner or direct the commissioner to take action the court considers proper.

**Sec. 10.50.655. Authority to cancel registration.** A foreign limited liability company registered in this state may cancel its registration by filing an application for cancellation with the department.

**Sec. 10.50.660. Contents of application for cancellation.** An application for cancellation filed by a foreign limited liability company must state

- (1) the name of the company and the state or other jurisdiction where the company was organized;
- (2) that the company is not conducting affairs in this state;
- (3) that the company cancels its registration in this state;
- (4) that the company revokes the authority of its registered agent for service of process in this state and consents that service of process may subsequently be made on the company by service on the commissioner for a cause of action arising in this state during the time the company was registered in this state; and
- (5) an address for mailing a copy of a process to the company.

**Sec. 10.50.665. Form, manner, and execution of application for cancellation.** The application for cancellation must be in the form and manner designated by the department and shall be signed on behalf of the foreign limited liability company by

- (1) a person with authority to sign the application under the law of the state or other jurisdiction of its organization; or
- (2) if the company is controlled by a receiver, trustee, or other court-appointed fiduciary, by the receiver, trustee, or other fiduciary.

**Sec. 10.50.670. Effect of cancellation of registration.** The cancellation of a registration under this chapter does not terminate the authority of the commissioner to accept service of process on the foreign limited liability company with respect to causes of action arising out of the company's conduct of affairs in this state.

**Sec. 10.50.675. Conducting affairs without registration.** (a) A foreign limited liability company conducting affairs in this state may not maintain an action or other proceeding in a court of this state until it has registered in this state.

- (b) The failure of a foreign limited liability company to register in this state does not
- (1) impair the validity of a contract or act of the company;
  - (2) affect the right of another party to a contract of the company to maintain an action or proceeding on the contract; or
  - (3) prevent the company from defending an action or other proceeding in a court of this state.

**Sec. 10.50.690. Liability for fees and penalties.** A foreign limited liability company that conducts affairs in this state without registration is liable to the department for the following fees and penalties for the full or partial years when it conducts affairs in this state without registration:

- (1) the fees that would have been imposed by this chapter on the company if the company had been registered under this chapter; or
- (2) the penalties imposed by this chapter.

**Sec. 10.50.700. Civil penalty.** (a) A foreign limited liability company that conducts affairs in this state without registration is subject to a civil penalty payable to the state not to exceed \$10,000 for each calendar year, including a partial year, the company conducts affairs in this state without being registered under this chapter.

(b) The civil penalty imposed in (a) of this section may be recovered in an action brought in the superior court by the attorney general.

**Sec. 10.50.710. Injunctive relief.** (a) Upon application to the court, if a court finds that a foreign limited liability company has conducted affairs in this state in violation of this chapter, the court may issue, in addition to imposing a civil penalty, an injunction restraining the company from conducting further affairs in this state and from further exercising the company's rights and privileges in this state.

(b) An injunction issued under (a) of this section may continue until the civil penalties, interest, and court costs assessed by the court have been paid and until the foreign limited liability company otherwise complies with this chapter.

**Sec. 10.50.715. Nonliability of member or manager.** A member or manager of a foreign limited liability company is not liable for the debts and obligations of the company solely because the company conducts affairs in this state without registration.

**Sec. 10.50.720. Transactions not constituting conducting affairs.** The activities of a foreign limited liability company that are not considered to be conducting affairs in this state for the purposes of AS 10.50.600 - 10.50.720 include

- (1) maintaining, defending, or settling a court action or other proceeding or a claim;
- (2) holding meetings of the members or managers of the company;
- (3) maintaining bank accounts;
- (4) selling through independent contractors;
- (5) soliciting or procuring orders by mail, through employees, agents, or otherwise, if the orders require acceptance outside the state before becoming binding contracts;
- (6) creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interests in real or personal property;
- (7) securing or collecting debts, or enforcing rights in property securing debts;
- (8) conducting an isolated transaction that is completed within 30 days and that is not part of a course of repeated transactions of a similar nature; or

(9) conducting affairs in interstate commerce.

## ARTICLE 14. COURT ACTIONS BY AND AGAINST LIMITED LIABILITY COMPANIES

### Section

#### **730. Actions against companies**

#### **735. Authority to sue on behalf of company**

**Sec. 10.50.730. Actions against companies.** A court action may be brought by or against a limited liability company. The court action may be brought in the name of the company.

**Sec. 10.50.735. Authority to sue on behalf of company.** (a) Except as provided in AS 10.50.320, and unless otherwise provided in an operating agreement of the company, a person may not bring a court action on behalf of a limited liability company in the name of the company unless the person is authorized under (b) or (c) or this section to bring the action.

(b) Whether or not the company is managed by a manager, a member of a limited liability company may bring a court action on behalf of the company in the name of the company if the member is authorized to bring the action by more than one-half of all of the members of the company who are eligible to consent to the authorization, unless a larger number of the members are required under AS 10.50.150(c) for the authorization. When determining whether the required number of members consent under AS 10.50.150, the total number of all members does not include a member who has an interest in the outcome of the action that is adverse to the interest of the company and the member with the adverse interest is excluded from determining the authorization.

(c) A manager of a limited liability company may bring a court action on behalf of the company in the name of the company if the manager is authorized to bring the action by the consent required under AS 10.50.150 of the members eligible to consent to the authorization. When determining the number of managers required to consent under AS 10.50.150, the number does not include a manager who has an interest in the outcome of the action that is adverse to the interest of the company and the manager with the adverse interest is excluded from determining the authorization.

## ARTICLE 15. BIENNIAL REPORT

### Section

#### **750. Biennial report required**

#### **755. Contents of biennial report**

#### **760. Filing of biennial report**

#### **765. Filing interim notice of change of managers or managing members**

**Sec. 10.50.750. Biennial report required.** A limited liability company and a foreign limited liability company conducting affairs in this state shall file a biennial report within the time established by this chapter.

**Sec. 10.50.755. Contents of biennial report.** A biennial report must set out

- (1) the name of the company and the state or country where it is organized;
- (2) the address of the registered office of the company in this state, and the name of its registered agent in this state at that address, and, in the case of a foreign limited liability company, the address of its principal office in the state or country where it is organized;
- (3) the names and addresses of the managers of the company, or, if the company is not managed by a manager, the names and addresses of the members of the company;
- (4) the name and address of each person owning at least a five percent interest in the company and the percentage of interest owned by that person in the company.

**Sec. 10.50.760. Filing of biennial report.** (a) A biennial report required by AS 10.50.750 shall be filed with the department and is due before January 2 of the filing year. A limited liability company filing articles of organization and a foreign limited liability company registering during an even-numbered year shall file the biennial report each even-numbered year. A limited liability company filing articles of organization and a foreign limited liability company registering during an odd-numbered year shall file the biennial report each odd-numbered year. The

biennial report is delinquent if not filed before February 1 of each odd- or even-numbered year as provided in this section.

(b) Proof to the satisfaction of the department that on or before February 1 the report was deposited in the United States mail in a sealed envelope, properly addressed with postage prepaid, is compliance with (a) of this section.

(c) The department shall file the report if it conforms to the requirements of this chapter. If the department finds that the report does not conform to the requirements of this chapter, the report shall promptly be returned to the company for necessary corrections.

(d) Upon receipt of a form from the department, a limited liability company shall file a biennial report within six months after original organization.

**Sec. 10.50.765. Filing interim notice of change of managers or managing members.** (a) In the event of a change of the manager of a limited liability company or of a foreign limited liability company registered under this chapter, or of a member of the company, if the members manage the company, during the first year of the biennial reporting period, the company shall file a notice of change amending the biennial report of the company before the following January 2.

(b) The notice shall be filed with the department and shall state the name and current mailing address of the manager or member not included in the company's last filed biennial report, and the name of the person replaced and the office held.

## ARTICLE 16. MISCELLANEOUS PROVISIONS

### Section

- 800. Company certificates**
- 810. Submission of documents to department**
- 820. Filing of documents by department**
- 830. Disapproval of writing by department; appeal**
- 840. Execution of documents**
- 850. Filing and other fees**
- 860. Maintenance of records**
- 870. Inspection of records**
- 880. Disclosure of information**
- 890. Waiver of notice**

**Sec. 10.50.800. Company certificates.** An operating agreement of a limited liability company may authorize the company to issue a certificate as evidence of a limited liability company interest. An operating agreement may also authorize and provide for the assignment or transfer of the interest represented by the certificate.

**Sec. 10.50.810. Submission of documents to department.** When a document is required or allowed to be delivered to or filed with the department under this chapter, the person delivering the document shall deliver to the department the required fee, the original signed document, and an exact copy of the document.

**Sec. 10.50.820. Filing of documents by department.** (a) If the department determines that a document filed under this chapter conforms to the filing requirements of this chapter, the department shall

(1) mark on the original signed document and on the exact copy the word "filed" and the date and time of the document's acceptance for filing;

(2) retain the original signed document in the department's files; and

(3) return the exact copy to the person who filed the document or to the person's representative.

(b) The department may not file a document if the requirements of this section are not met.

**Sec. 10.50.830. Disapproval of writing by department; appeal.** If the department fails to approve articles of organization, amendment, merger, consolidation, or dissolution, or any other document required by this chapter to be approved by the department, the department shall, within 10 days after the delivery of the document to the department, give written notice of disapproval to the person, limited liability company, or foreign limited liability company, delivering the document, and specifying the reasons for disapproval. The person or company may appeal the disapproval to the superior court.

**Sec. 10.50.840. Execution of documents.** (a) Unless otherwise provided in this chapter, a document required by this chapter to be filed with the department by or for a limited liability company shall be signed by

(1) a manager of the company if the company is managed by a manager;

(2) a member of the company if the articles of organization do not provide that the company is managed by a manager;

(3) a person organizing the company if the company is not organized;

(4) the fiduciary if the company is controlled by a receiver, trustee, or other court-appointed fiduciary.

(b) A person signing a document filed with the department under this chapter shall state beneath or opposite the signature the person's name and the capacity in which the person signs.

(c) A person signing a document filed with the department under this chapter may sign as an attorney-in-fact, but is not required to provide or file with the department a document authorizing the person to act as attorney-in-fact for the signing of a document.

**Sec. 10.50.850. Filing and other fees.** The department shall charge fees established by the department by regulation adopted under AS 44.62 (Administrative Procedure Act) for

(1) filing the original articles of organization;

(2) filing an amendment of registration;

(3) filing articles of merger or consolidation;

(4) filing articles of dissolution;

(5) issuing a document not otherwise covered by this section;

(6) furnishing a copy of a document;

(7) accepting an application for reservation of a name, or filing a notice of the transfer or cancellation of a name reservation;

(8) filing a statement of change of address for a registered office or registered agent;

(9) accepting service of a notice, demand, or process upon the department;

(10) filing the application for registration of a foreign limited liability company;

(11) registering a name, reserving a name, or renewing a name registration under this chapter; or

(12) filing another document allowed or required under this chapter.

**Sec. 10.50.860. Maintenance of records.** Unless otherwise provided in an operating agreement, a limited liability company shall keep at its main office

(1) current and past lists that state in alphabetical order the full name and last known mailing address of every member and manager of the company;

(2) a copy of the company's articles of organization and amendments to the articles, including a signed copy of a power of attorney used by a person who signed articles of amendment for the company;

(3) a copy of the company's federal, state, and local income tax returns and financial statements, if any, for the three most recent years or, if the returns and statements are not prepared, a copy of the information and statements provided to, or that should have been provided to, the members to enable the members to prepare their federal, state, and local tax returns for the three-year period;

(4) a copy of any effective operating agreement of the company, amendments to the agreement, and former operating agreements;

(5) unless contained in an operating agreement,

(A) a document stating the amount of cash contributed by a member of the company, the agreed value of other property or services contributed by a member, and when a member is to make additional contributions;

(B) a document stating the events, if any, that cause the company to be dissolved and its affairs wound up; and

(C) other documents that an operating agreement requires the company to prepare.

**Sec. 10.50.870. Inspection of records.** (a) A limited liability company shall make its books and records of account, or certified copies of them, reasonably available for inspection and copying at its registered office or principal office in the state by a member of the company. Member inspection shall be upon written demand stating with reasonable particularity the purpose of the inspection. The inspection may be in person or by agent or attorney, at a reasonable time and for a proper purpose. Only books and records of account, minutes, and the record of members directly connected to the stated purpose of the inspection may be inspected or copied.

(b) A manager, or, if the company is not managed by a manager, a member, who, or a limited liability company that, refuses to allow a member, or the agent or attorney of the member, to examine and make copies from its books and records of account, minutes, and record of members, for a proper purpose, is liable to the member for a penalty in the amount of 10 percent of the value of the limited liability company interests owned by the member or \$5,000, whichever is greater, in addition to other damages or remedy given the member by law. It is a defense to an action for penalties under this section that the person suing has within two years sold or offered for sale a list of members of the company or any other limited liability company or has aided or abetted a person in procuring a list of members for this purpose, or has improperly used information secured through a prior examination of the books and

records of account, minutes, or record of members of the company or any other limited liability company, or was not acting in good faith or for a proper purpose in making the person's demand.

(c) Nothing in this chapter impairs the power of a court, upon proof by a member of a demand properly made and for a proper purpose, to compel the production for examination by the member of the books and records of account, minutes, and record of members of a limited liability company.

**Sec. 10.50.880. Disclosure of information.** The members of a limited liability company, if the articles of organization do not provide that the company is managed by a manager, or the manager of the company, if the articles of organization provide that the company is managed by a manager, shall provide, to the extent just and reasonable under the circumstances, true and full information of all matters that affect the members of a company to a member or to the legal representative of a deceased member or a member under a legal disability.

**Sec. 10.50.890. Waiver of notice.** If notice is required to be given to a member or manager of a limited liability company under the provisions of this chapter or under the provisions of the articles of organization or an operating agreement of the company, a waiver of the notice in writing signed by the person entitled to notice, whether before or after the time stated for notice, is equivalent to the giving of notice.

## **ARTICLE 17. GENERAL PROVISIONS**

### **Section**

#### **900. Regulations**

#### **910. Interstate application**

#### **990. Definitions**

#### **995. Short title**

**Sec. 10.50.900. Regulations.** In addition to the regulations the department is required to adopt under this chapter, the department may adopt other regulations under AS 44.62 (Administrative Procedure Act) to implement this chapter.

**Sec. 10.50.910. Interstate application.** A limited liability company that is organized and existing under this chapter may conduct its affairs and exercise the powers granted by this chapter in another jurisdiction, subject to the laws of that jurisdiction.

**Sec. 10.50.990. Definitions.** In this chapter, unless the context indicates otherwise,

- (1) "articles of organization" means the articles of organization filed under AS 10.50.070 and the articles as amended or restated;
- (2) "commissioner" means the commissioner of commerce, community, and economic development;
- (3) "corporation" means a corporation organized under the laws of this or another state, or of this or another country;
- (4) "department" means the Department of Commerce, Community, and Economic Development;
- (5) "filed," unless expressly provided otherwise, means filed with the department;
- (6) "foreign limited liability company" means an organization that is
  - (A) not incorporated;
  - (B) organized under the law of a state other than this state, or under the law of a foreign country;
  - (C) organized under a statute that affords to each of its members limited liability regarding the liabilities of the organization; and
  - (D) not required to be registered under a statute of this state other than this chapter;
- (7) "interim distribution" means a distribution of the assets of a limited liability company to the company's members, except as provided under AS 10.50.425;
- (8) "know" means to have actual knowledge or to know other facts that demonstrate bad faith in the circumstances; this definition applies also to the derivatives of "know," including "known," "unknown," and "knowledge";
- (9) "limited liability company" or "domestic limited liability company" means an organization organized under this chapter;
- (10) "limited liability company interest" means an interest in a limited liability company issued under AS 10.50.275;
- (11) "limited partnership" means a limited partnership organized under AS 32.11 or under the law of another state or a foreign country;

(12) "manager" means a person who manages a limited liability company, if the articles of organization provide that the company is managed by a manager;

(13) "managing member" means a member of a limited liability company if the company's articles of organization do not provide that the company is managed by a manager;

(14) "member" means a person who has been admitted to membership in a limited liability company under AS 10.50.155 - 10.50.160 and whose membership has not ended under AS 10.50.180 - 10.50.185 or 10.50.205 - 10.50.225;

(15) "operating agreement" means a written agreement among all of the members of a limited liability company about conducting the affairs of the company;

(16) "professional service" has the meaning given in AS 10.45.500;

(17) "property" includes cash;

(18) "state" means a state, territory, or possession of the United States, and includes the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands;

(19) "consolidation" means a consolidation authorized by AS 10.50.500;

(20) "merger" means a merger authorized by AS 10.50.500.

**Sec. 10.50.995. Short title.** This chapter may be cited as the Alaska Revised Limited Liability Company Act.

## **CHAPTER 55. ALASKA ENTITY TRANSACTIONS ACT**

### **Article**

- 1. General Provisions (§§ 10.55.103 – 10.55.120)**
- 2. Merger (§§ 10.55.201 – 10.50.206)**
- 3. Interest Exchange (§§ 10.55.301 – 10.55.306)**
- 4. Conversion (§§ 10.55.401 – 10.55.406)**
- 5. Domestication (§§ 10.55.501 – 10.55.506)**
- 6. Filings (§§ 10.55.601 – 10.55.625)**
- 7. Miscellaneous Provisions (§§ 10.55.701, 10.55.702)**
- 8. Definitions and Title (§§ 10.55.901, 10.55.902)**

## **ARTICLE 1. GENERAL PROVISIONS**

### **Section**

- 103. Relationship of this chapter to other laws**
- 104. Required notice or approval**
- 105. Status of filings**
- 106. Nonexclusivity**
- 107. Reference to external facts**
- 108. Alternative means of approval of transactions**
- 109. Dissenters' rights**
- 110. Excluded entities and transactions**
- 120. Names**

**Sec. 10.55.103. Relationship of this chapter to other laws.** (a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) Except as expressly provided in this chapter, this chapter does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this chapter.

(c) A transaction accomplished under this chapter may not create or impair any right or obligation of a person under a provision of the law of this state other than this chapter relating to a change in control, takeover, business combination, control-share acquisition, or similar transaction involving a domestic merging, acquired, converting, or domesticating corporation unless,

(1) if the corporation does not survive the transaction, the transaction satisfies any requirements of the provision; or

(2) if the corporation survives the transaction, the approval of the plan is by a vote of the shareholders or directors that would be sufficient to create or impair the right or obligation directly under the provision.

**Sec. 10.55.104. Required notice or approval.** (a) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer in order to be a party to a merger shall give the notice or obtain the approval in order to be a party to an interest exchange, conversion, or domestication.

(b) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this chapter becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, or devised unless, to the extent required by or under the law of this state concerning the nondiversion of charitable assets, the entity obtains an appropriate order of the superior court specifying the disposition of the property.

**Sec. 10.55.105. Status of filings.** A filing under this chapter becomes part of the public organic document of the entity.

**Sec. 10.55.106. Nonexclusivity.** The fact that a transaction under this chapter produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this chapter.

**Sec. 10.55.107. Reference to external facts.** A plan may refer to facts ascertainable outside of the plan in the manner in which the facts will operate on the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

**Sec. 10.55.108. Alternative means of approval of transactions.** Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this chapter by the unanimous vote or consent of its interest holders satisfies the requirements of this chapter for approval of the transaction.

**Sec. 10.55.109. Dissenters' rights.** (a) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to dissenters' rights in connection with the transaction if the interest holder would have been entitled to dissenters' rights under the entity's organic law in connection with a merger in which the interest of the interest holder was changed, converted, or exchanged unless

- (1) the organic law permits the organic rules to limit the availability of dissenters' rights; and
- (2) the organic rules provide the limit described in (1) of this subsection.

(b) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to contractual dissenters' rights in connection with a transaction under this chapter to the extent provided

- (1) in the entity's organic rules;
- (2) in the plan; or
- (3) in the case of a business corporation, by action of its governors.

(c) If an interest holder is entitled to contractual dissenters' rights under (b) of this section and the entity's organic law does not provide procedures for the conduct of a dissenters' rights proceeding, the interest holder is entitled to use the procedures established under AS 10.06.576 as if the interest holder were a dissenting shareholder of a corporation under AS 10.06.

**Sec. 10.55.110. Excluded entities and transactions.** The following entities may not participate in a transaction under this chapter:

- (1) a financial institution; in this paragraph, "financial institution" has the meaning given in AS 06.01.050;
- (2) an insurer regulated by AS 21, including a fraternal benefit society regulated under AS 21.84;
- (3) a business and industrial development corporation under AS 10.10;
- (4) a BIDCO under AS 10.13;
- (5) a cooperative under AS 10.15;
- (6) a cooperative under AS 10.25 (Electric and Telephone Cooperative Act);
- (7) a public corporation; or
- (8) a municipality.

**Sec. 10.55.120. Names.** Notwithstanding the other provisions of this chapter, if a domestic entity is created under this chapter or if the name of a domestic entity is changed under this chapter, the name of the domestic entity may not be a name that is reserved or registered to another entity under AS 10.35 and must comply with the name requirements of any organic law that applies to the domestic entity.

**ARTICLE 2.**  
**MERGER**

**Section**

- 201. Merger authorized**
- 202. Plan of merger**
- 203. Approval of merger.**
- 204. Amendment or abandonment of plan of merger**
- 205. Statement of merger; effective date**
- 206. Effect of merger**

**Sec. 10.55.201. Merger authorized.** (a) Except as otherwise provided in AS 10.55.201 - 10.55.206, by complying with AS 10.55.201 - 10.55.206,

(1) one or more domestic entities may merge with one or more domestic or foreign entities into a domestic or foreign surviving entity; and

(2) two or more foreign entities may merge into a domestic entity.

(b) Except as otherwise provided in this section, by complying with the provisions of AS 10.55.201 - 10.55.206 applicable to foreign entities, a foreign entity may be a party to a merger under AS 10.55.201 - 10.55.206 or may be the surviving entity in a merger if the merger is authorized by the law of the foreign entity's jurisdiction of organization.

(c) The provisions of AS 10.55.201 - 10.55.206 do not apply to

(1) a merger or consolidation under

(A) AS 10.06.530 - 10.06.562 or 10.06.960 (Alaska Corporations Code); or

(B) AS 10.50.500 - 10.50.565 (Alaska Revised Limited Liability Company Act); or

(2) a merger under

(A) AS 10.20.216 - 10.20.280 (Alaska Nonprofit Corporation Act); or

(B) AS 32.06.905 - 32.06.907 (Uniform Partnership Act).

**Sec. 10.55.202. Plan of merger.** (a) A domestic entity may become a party to a merger under AS 10.55.201 - 10.55.206 by approving a plan of merger. The plan must be in a record and contain

(1) as to each merging entity, the merging entity's name, jurisdiction of organization, and type;

(2) if the surviving entity is to be created in the merger, a statement to that effect and the surviving entity's name, jurisdiction of organization, and type;

(3) the manner of converting the interests in each party to the merger into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of interests, securities, obligations, rights to acquire interests or securities, cash, or other property;

(4) if the surviving entity exists before the merger, any proposed amendments to the surviving entity's public organic document or private organic rules that are, or are proposed to be, in a record;

(5) if the surviving entity is to be created in the merger, the surviving entity's proposed public organic document, if any, and the full text of the surviving entity's private organic rules that are proposed to be in a record;

(6) the other terms and conditions of the merger; and

(7) any other provision required by the law of a merging entity's jurisdiction of organization or the organic rules of a merging entity.

(b) A plan of merger may contain any other provision not prohibited by law.

**Sec. 10.55.203. Approval of merger.** (a) A plan of merger is not effective unless it has been approved

(1) by a domestic merging entity

(A) in accordance with the requirements, if any, in the merging entity's organic law and organic rules for approval of,

(i) in the case of an entity that is not a business corporation, a merger; or

(ii) in the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation; or

(B) if neither the merging entity's organic law nor organic rules provide for approval of a merger described in (A)(ii) of this paragraph, by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) in a record, by each interest holder of a domestic merging entity that will have interest-holder liability for liabilities that arise after the merger becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation,

(A) the organic rules of the entity provide in a record for the approval of a merger in which some or all of the entity's interest holders become subject to interest-holder liability by the vote or consent of fewer than all of the interest holders; and

(B) the interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A merger involving a foreign merging entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.

**Sec. 10.55.204. Amendment or abandonment of plan of merger.** (a) A plan of merger of a domestic merging entity may be amended

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by the governors or interest holders of the entity in the manner provided in the plan; however, an interest holder that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the plan that will change

(A) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, to be received by the interest holders of any party to the plan;

(B) the public organic document or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of merger has been approved by a domestic merging entity and before a statement of merger becomes effective, the plan may be abandoned

(1) as provided in the plan; or

(2) unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of merger is abandoned after a statement of merger has been filed with the department and before the filing becomes effective, a statement of abandonment, signed on behalf of a merging entity, must be filed with the department before the time the statement of merger becomes effective. The statement of abandonment takes effect on filing, and the merger is abandoned and does not become effective. The statement of abandonment must contain

(1) the name of each merging or surviving entity that is a domestic entity or a qualified foreign entity;

(2) the date on which the statement of merger was filed; and

(3) a statement that the merger has been abandoned in accordance with this section.

**Sec. 10.55.205. Statement of merger; effective date.** (a) A statement of merger shall be signed on behalf of each merging entity and filed with the department.

(b) A statement of merger must contain

(1) the name, jurisdiction of organization, and type of each merging entity that is not the surviving entity;

(2) the name, jurisdiction of organization, and type of the surviving entity;

(3) if the statement of merger is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;

(4) a statement that the merger was approved by each domestic merging entity, if any, in accordance with AS 10.55.201 - 10.55.206 and by each foreign merging entity, if any, in accordance with the law of the foreign merging entity's jurisdiction of organization;

(5) if the surviving entity exists before the merger and is a domestic filing entity, any amendment to the surviving entity's public organic document approved as part of the plan of merger;

(6) if the surviving entity is created by the merger and is a domestic filing entity, the surviving entity's public organic document, as an attachment;

(7) if the surviving entity is created by the merger and is a domestic limited liability partnership, the surviving entity's statement of qualification, as an attachment; and

(8) if the surviving entity is a foreign entity that is not a qualified foreign entity, a mailing address to which the department may send any process served on the commissioner under AS 10.55.206(e).

(c) In addition to the requirements of (b) of this section, a statement of merger may contain any other provision not prohibited by law.

(d) If the surviving entity is a domestic entity, the surviving entity's public organic document, if any, must satisfy the requirements of the law of this state, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic document.

(e) A plan of merger that is signed on behalf of all of the merging entities and meets all of the requirements of (b) of this section may be filed with the department instead of a statement of merger and, on filing, has the same effect as a statement of merger. If a plan of merger is filed as provided in this subsection, references in this chapter to a statement of merger refer to the plan of merger filed under this subsection.

(f) A statement of merger becomes effective on the date and time of filing or the later date and time specified in the statement of merger under (b)(3) of this section.

- Sec. 10.55.206. Effect of merger.** (a) When a merger becomes effective,
- (1) the surviving entity continues or comes into existence;
  - (2) each merging entity that is not the surviving entity ceases to exist;
  - (3) all property of each merging entity vests in the surviving entity without assignment, reversion, or impairment;
  - (4) all liabilities of each merging entity are liabilities of the surviving entity;
  - (5) except as otherwise provided by law other than this chapter or the plan of merger, all of the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;
  - (6) if the surviving entity exists before the merger,
    - (A) all of the surviving entity's property continues to be vested in it without reversion or impairment;
    - (B) the surviving entity remains subject to all of its liabilities; and
    - (C) all of the surviving entity's rights, privileges, immunities, powers, and purposes continue to be vested in it;
  - (7) the name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;
  - (8) if the surviving entity exists before the merger,
    - (A) the surviving entity's public organic document, if any, is amended as provided in the statement of merger and is binding on its interest holders; and
    - (B) the surviving entity's private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger and are binding on and enforceable by
      - (i) the surviving entity's interest holders; and
      - (ii) in the case of a surviving entity that is not a business corporation or a nonprofit corporation, any other person that is a party to an agreement that is part of the surviving entity's private organic rules;
  - (9) if the surviving entity is created by the merger,
    - (A) and if the surviving entity is a domestic entity, the surviving entity is subject to the organic law in this state that governs the internal affairs of the type of entity of the surviving entity;
    - (B) the surviving entity's public organic document, if any, is effective and is binding on its interest holders; and
    - (C) the surviving entity's private organic rules are effective and are binding on and enforceable by
      - (i) the surviving entity's interest holders; and
      - (ii) in the case of a surviving entity that is not a business corporation or a nonprofit corporation, any other person that was a party to an agreement that was part of the organic rules of a merging entity if that person has agreed to be a party to an agreement that is part of the surviving entity's private organic rules; and
  - (10) the interests in each merging entity that are to be converted in the merger are converted, and the interest holders of those interests are entitled only to the rights provided to them under the plan of merger and to any dissenters' rights they have under AS 10.55.109 and the merging entity's organic law.
- (b) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding up of the merging entity.
- (c) When a merger becomes effective, a person that did not have interest-holder liability with respect to any of the merging entities and that becomes subject to interest-holder liability with respect to a domestic entity as a result of a merger has interest-holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the merger becomes effective.
- (d) When a merger becomes effective, the interest-holder liability of a person that ceases to hold an interest in a domestic merging entity with respect to which the person had interest-holder liability is as follows:
- (1) the merger does not discharge any interest-holder liability under the organic law of the domestic merging entity to the extent the interest-holder liability arose before the merger became effective;
  - (2) the person does not have interest-holder liability under the organic law of the domestic merging entity for any liability that arises after the merger becomes effective;
  - (3) the organic law of the domestic merging entity continues to apply to the release, collection, or discharge of any interest-holder liability preserved under (1) of this subsection as if the merger had not occurred and the surviving entity were the domestic merging entity; and
  - (4) the person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of the domestic merging entity with respect to any interest-holder liability preserved under (1) of this subsection as if the merger had not occurred.
- (e) When a merger becomes effective, a foreign entity that is the surviving entity

(1) may be served with process in this state for the collection and enforcement of any liabilities of a domestic merging entity; and

(2) appoints the commissioner as the foreign entity's agent for service of process for collecting or enforcing those liabilities.

(f) When a merger becomes effective, the certificate of authority or other foreign qualification of any foreign merging entity that is not the surviving entity is cancelled.

### **ARTICLE 3. INTEREST EXCHANGE**

#### **Section**

**301. Interest exchange authorized**

**302. Plan of interest exchange**

**303. Approval of interest exchange**

**304. Amendment or abandonment of plan of interest exchange**

**305. Statement of interest exchange; effective date**

**306. Effect of interest exchange**

**Sec. 10.55.301. Interest exchange authorized.** (a) Except as otherwise provided in this section, by complying with AS 10.55.301 - 10.55.306,

(1) a domestic entity may acquire all of one or more classes or series of interests of another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of interests, securities, obligations, rights to acquire interests or securities, cash, or other property; or

(2) all of one or more classes or series of interests of a domestic entity may be acquired by another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of interests, securities, obligations, rights to acquire interests or securities, cash, or other property.

(b) Except as otherwise provided in this section, by complying with the provisions of AS 10.55.301 - 10.55.306 applicable to foreign entities, a foreign entity may be the acquiring or acquired entity in an interest exchange under AS 10.55.301 - 10.55.306 if the interest exchange is authorized by the law of the foreign entity's jurisdiction of organization.

(c) Unless the provision is amended after July 1, 2014, if a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to an interest exchange, the provision applies to an interest exchange in which the domestic entity is the acquired entity as if the interest exchange were a merger.

(d) The provisions of AS 10.55.301 - 10.55.306 do not apply to a share exchange under AS 10.06.530 - 10.06.582 or 10.06.960. In this subsection, "share exchange" means a share exchange authorized by AS 10.06.538 or an exchange regulated by AS 10.06.960.

**Sec. 10.55.302. Plan of interest exchange.** (a) A domestic entity may be the acquired entity in an interest exchange under AS 10.55.301 - 10.55.306 by approving a plan of interest exchange. The plan must be in a record and contain

(1) the name and type of the acquired entity;

(2) the name, jurisdiction of organization, and type of the acquiring entity;

(3) the manner of converting the interests in the acquired entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of interests, securities, obligations, rights to acquire interests or securities, cash, or other property;

(4) any proposed amendments to the public organic document or private organic rules that are, or are proposed to be, in a record of the acquired entity;

(5) the other terms and conditions of the interest exchange; and

(6) any other provision required by the law of this state or the organic rules of the acquired entity.

(b) A plan of interest exchange may contain any other provision not prohibited by law.

**Sec. 10.55.303. Approval of interest exchange.** (a) A plan of interest exchange is not effective unless it has been approved

(1) by a domestic acquired entity

(A) in accordance with the requirements, if any, in the acquired entity's organic law and organic rules for approval of an interest exchange;

(B) except as otherwise provided in (d) of this section, if neither the acquired entity's organic law nor organic rules provide for approval of an interest exchange, in accordance with the requirements, if any, in the acquired entity's organic law and organic rules for approval of,

(i) in the case of an entity that is not a business corporation, a merger, as if the interest exchange were a merger; or

(ii) in the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the interest exchange were that type of merger; or

(C) if neither its organic law nor organic rules provide for approval of an interest exchange or a merger described in (B)(ii) of this paragraph, by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) in a record, by each interest holder of a domestic acquired entity that will have interest-holder liability for liabilities that arise after the interest exchange becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation,

(A) the organic rules of the entity provide in a record for the approval of an interest exchange or a merger in which some or all of the entity's interest holders become subject to interest-holder liability by the vote or consent of fewer than all of the interest holders; and

(B) the interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) An interest exchange involving a foreign acquired entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.

(c) Except as otherwise provided in the acquiring entity's organic law or organic rules, the interest holders of the acquiring entity are not required to approve the interest exchange.

(d) A provision of the organic law of a domestic acquired entity that would permit a merger between the acquired entity and the acquiring entity to be approved without the vote or consent of the interest holders of the acquired entity because of the percentage of interests in the acquired entity held by the acquiring entity does not apply to approval of an interest exchange under (a)(1)(B) of this section.

**Sec. 10.55.304. Amendment or abandonment of plan of interest exchange.** (a) A plan of interest exchange of a domestic acquired entity may be amended

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by the governors or interest holders of the entity in the manner provided in the plan; however, an interest holder that was entitled to vote on or consent to approval of the interest exchange is entitled to vote on or consent to any amendment of the plan that will change

(A) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, to be received by any of the interest holders of the acquired entity under the plan;

(B) the public organic document or private organic rules of the acquired entity that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the interest holders of the acquired entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of interest exchange has been approved by a domestic acquired entity and before a statement of interest exchange becomes effective, the plan may be abandoned

(1) as provided in the plan; or

(2) unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of interest exchange is abandoned after a statement of interest exchange has been filed with the department and before the filing becomes effective, a statement of abandonment, signed on behalf of the acquired entity, must be filed with the department before the time the statement of interest exchange becomes effective. The statement of abandonment takes effect on filing, and the interest exchange is abandoned and does not become effective. The statement of abandonment must contain

(1) the name of the acquired entity;

(2) the date on which the statement of interest exchange was filed; and

(3) a statement that the interest exchange has been abandoned in accordance with this section.

**Sec. 10.55.305. Statement of interest exchange; effective date.** (a) A statement of interest exchange shall be signed on behalf of a domestic acquired entity and filed with the department.

(b) A statement of interest exchange must contain

(1) the name and type of the acquired entity;

(2) the name, jurisdiction of organization, and type of the acquiring entity;

(3) if the statement of interest exchange is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;

(4) a statement that the plan of interest exchange was approved by the acquired entity in accordance with AS 10.55.301 - 10.55.306; and

(5) any amendments to the acquired entity's public organic document approved as part of the plan of interest exchange.

(c) In addition to the requirements of (b) of this section, a statement of interest exchange may contain any other provision not prohibited by law.

(d) A plan of interest exchange that is signed on behalf of a domestic acquired entity and meets all of the requirements of (b) of this section may be filed with the department instead of a statement of interest exchange and, on filing, has the same effect as a statement of interest exchange. If a plan of interest exchange is filed as provided in this subsection, references in this chapter to a statement of interest exchange refer to the plan of interest exchange filed under this subsection.

(e) A statement of interest exchange becomes effective on the date and time of filing or the later date and time specified in the statement of interest exchange.

**Sec. 10.55.306. Effect of interest exchange.** (a) When an interest exchange becomes effective,

(1) the interests in the acquired entity that are the subject of the interest exchange cease to exist or are converted or exchanged, and the interest holders of those interests are entitled only to the rights provided to them under the plan of interest exchange and to any dissenters' rights they have under AS 10.55.109 and the acquired entity's organic law;

(2) the acquiring entity becomes the interest holder of the interests in the acquired entity stated in the plan of interest exchange to be acquired by the acquiring entity;

(3) the public organic document, if any, of the acquired entity is amended as provided in the statement of interest exchange and is binding on the acquired entity's interest holders; and

(4) the private organic rules of the acquired entity that are to be in a record, if any, are amended to the extent provided in the plan of interest exchange and are binding on and enforceable by

(A) the acquired entity's interest holders; and

(B) in the case of an acquired entity that is not a business corporation or nonprofit corporation, any other person that is a party to an agreement that is part of the acquired entity's private organic rules.

(b) Except as otherwise provided in the organic law or organic rules of the acquired entity, the interest exchange does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding up of the acquired entity.

(c) When an interest exchange becomes effective, a person that did not have interest-holder liability with respect to the acquired entity and that becomes subject to interest-holder liability with respect to a domestic entity as a result of the interest exchange has interest-holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the interest exchange becomes effective.

(d) When an interest exchange becomes effective, the interest-holder liability of a person that ceases to hold an interest in a domestic acquired entity with respect to which the person had interest-holder liability is as follows:

(1) the interest exchange does not discharge any interest-holder liability under the organic law of the domestic acquired entity to the extent the interest-holder liability arose before the interest exchange became effective;

(2) the person does not have interest-holder liability under the organic law of the domestic acquired entity for any liability that arises after the interest exchange becomes effective;

(3) the organic law of the domestic acquired entity continues to apply to the release, collection, or discharge of any interest-holder liability preserved under (1) of this subsection as if the interest exchange had not occurred; and

(4) the person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of the domestic acquired entity with respect to any interest-holder liability preserved under (1) of this subsection as if the interest exchange had not occurred.

## **ARTICLE 4. CONVERSION**

### **Section**

**401. Conversion authorized**

**402. Plan of conversion**

**403. Approval of conversion**

**404. Amendment or abandonment of plan of conversion**

**405. Statement of conversion; effective date**

**406. Effect of conversion**

**Sec. 10.55.401. Conversion authorized.** (a) Except as otherwise provided in this section, by complying with AS 10.55.401 - 10.55.406, a domestic entity may become

(1) a domestic entity of a different type; or

(2) a foreign entity of a different type, if the conversion is authorized by the law of the foreign jurisdiction.

(b) Except as otherwise provided in this section, by complying with the provisions of AS 10.55.401 - 10.55.406 applicable to foreign entities, a foreign entity may become a domestic entity of a different type if the conversion is authorized by the law of the foreign entity's jurisdiction of organization.

(c) Unless the provision is amended after July 1, 2014, if a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a conversion, the provision applies to a conversion of the entity as if the conversion were a merger.

**Sec. 10.55.402. Plan of conversion.** (a) A domestic entity may convert to a different type of entity under AS 10.55.401 - 10.55.406 by approving a plan of conversion. The plan must be in a record and contain

(1) the name and type of the converting entity;

(2) the name, jurisdiction of organization, and type of the converted entity;

(3) the manner of converting the interests in the converting entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of interests, securities, obligations, rights to acquire interests or securities, cash, or other property;

(4) the proposed public organic document of the converted entity, if the converted entity will be a filing entity;

(5) the full text of the private organic rules of the converted entity that are proposed to be in a record;

(6) the other terms and conditions of the conversion; and

(7) any other provision required by the law of this state or the organic rules of the converting entity.

(b) A plan of conversion may contain any other provision not prohibited by law.

**Sec. 10.55.403. Approval of conversion.** (a) A plan of conversion is not effective unless it has been approved

(1) by a domestic converting entity

(A) in accordance with the requirements, if any, in the converted entity's organic rules for approval of a conversion;

(B) if the converted entity's organic rules do not provide for approval of a conversion, in accordance with the requirements, if any, in the converted entity's organic law and organic rules for approval of,

(i) in the case of an entity that is not a business corporation, a merger, as if the conversion were a merger;

or

(ii) in the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the conversion were that type of merger; or

(C) if neither its organic law nor organic rules provide for approval of a conversion or a merger described in (B)(ii) of this paragraph, by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) in a record, by each interest holder of a domestic converting entity that will have interest-holder liability for liabilities that arise after the conversion becomes effective, unless, in the case of an entity that is not a business or nonprofit corporation,

(A) the organic rules of the entity provide in a record for the approval of a conversion or a merger in which some or all of the entity's interest holders become subject to interest-holder liability by the vote or consent of fewer than all of the interest holders; and

(B) the interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.

**Sec. 10.55.404. Amendment or abandonment of plan of conversion.** (a) A plan of conversion of a domestic converting entity may be amended

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by the governors or interest holders of the entity in the manner provided in the plan; however, an interest holder that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change

(A) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, to be received by any of the interest holders of the converting entity under the plan;

(B) the public organic document or private organic rules of the converted entity that will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of conversion has been approved by a domestic converting entity and before a statement of conversion becomes effective, the plan may be abandoned

(1) as provided in the plan; or

(2) unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of conversion is abandoned after a statement of conversion has been filed with the department and before the filing becomes effective, a statement of abandonment, signed on behalf of the entity, must be filed with the department before the time the statement of conversion becomes effective. The statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain

(1) the name of the converting entity;

(2) the date on which the statement of conversion was filed; and

(3) a statement that the conversion has been abandoned in accordance with this section.

**Sec. 10.55.405. Statement of conversion; effective date.** (a) A statement of conversion shall be signed on behalf of the converting entity and filed with the department.

(b) A statement of conversion must contain

(1) the name, jurisdiction of organization, and type of the converting entity;

(2) the name, jurisdiction of organization, and type of the converted entity;

(3) if the statement of conversion is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;

(4) if the converting entity is a

(A) domestic entity, a statement that the plan of conversion was approved in accordance with AS 10.55.401 - 10.55.406; or

(B) foreign entity, a statement that the conversion was approved by the foreign converting entity in accordance with the law of its jurisdiction of organization;

(5) if the converted entity is a domestic filing entity, the text of the converted entity's public organic document, as an attachment;

(6) if the converted entity is a domestic limited liability partnership, the text of the converted entity's statement of qualification, as an attachment; and

(7) if the converted entity is a foreign entity that is not a qualified foreign entity, a mailing address to which the department may send any process served on the commissioner under AS 10.55.406(e).

(c) In addition to the requirements of (b) of this section, a statement of conversion may contain any other provision not prohibited by law.

(d) If the converted entity is a domestic entity, the converted entity's public organic document, if any, must satisfy the requirements of the law of this state, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic document.

(e) A plan of conversion that is signed on behalf of a domestic converting entity and meets all of the requirements of (b) of this section may be filed with the department instead of a statement of conversion and, on filing, has the same effect as a statement of conversion. If a plan of conversion is filed as provided in this subsection, references in this chapter to a statement of conversion refer to the plan of conversion filed under this subsection.

(f) A statement of conversion becomes effective on the date and time of filing or the later date and time specified in the statement of conversion under (b)(3) of this section.

**Sec. 10.55.406. Effect of conversion.** (a) When a conversion becomes effective,

(1) the converted entity is

(A) organized under and subject to the organic law of the converted entity; and

(B) the same entity without interruption as the converting entity;

(2) all property of the converting entity continues to be vested in the converted entity without assignment, reversion, or impairment;

(3) all liabilities of the converting entity continue as liabilities of the converted entity;

(4) except as provided by law other than this chapter or the plan of conversion, all of the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

(5) the name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(6) if a converted entity is a filing entity, the converted entity's public organic document is effective and is binding on its interest holders;

(7) if the converted entity is a limited liability partnership, the converted entity's statement of qualification is effective simultaneously;

(8) the private organic rules of the converted entity that are to be in a record, if any, approved as part of the plan of conversion are effective and are binding on and enforceable by

(A) the converted entity's interest holders; and

(B) in the case of a converted entity that is not a business corporation or nonprofit corporation, any other person that is a party to an agreement that is part of the entity's private organic rules; and

(9) the interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any dissenters' rights they have under AS 10.55.109 and the converting entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of the converting entity, the conversion does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding up of the converting entity.

(c) When a conversion becomes effective, a person that did not have interest-holder liability with respect to the converting entity and that becomes subject to interest-holder liability with respect to a domestic entity as a result of a conversion has interest-holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the conversion becomes effective.

(d) When a conversion becomes effective,

(1) the conversion does not discharge any interest-holder liability under the organic law of a domestic converting entity to the extent the interest-holder liability arose before the conversion became effective;

(2) a person does not have interest-holder liability under the organic law of a domestic converting entity for any liability that arises after the conversion becomes effective;

(3) the organic law of a domestic converting entity continues to apply to the release, collection, or discharge of any interest-holder liability preserved under (1) of this subsection as if the conversion had not occurred; and

(4) a person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of the domestic converting entity with respect to any interest-holder liability preserved under (1) of this subsection as if the conversion had not occurred.

(e) When a conversion becomes effective, a foreign entity that is the converted entity

(1) may be served with process in this state for the collection and enforcement of any of the foreign entity's liabilities; and

(2) appoints the commissioner as the foreign entity's agent for service of process for collecting or enforcing those liabilities.

(f) If the converting entity is a qualified foreign entity, the certificate of authority or other foreign qualification of the converting entity is cancelled when the conversion becomes effective.

(g) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

## ARTICLE 5. DOMESTICATION

### Section

#### **501. Domestication authorized**

#### **502. Plan of domestication**

#### **503. Approval of domestication**

#### **504. Amendment or abandonment of plan of domestication**

#### **505. Statement of domestication; effective date**

#### **506. Effect of domestication**

**Sec. 10.55.501. Domestication authorized.** (a) Except as otherwise provided in this section, by complying with AS 10.55.501 - 10.55.506, a domestic entity may become a domestic entity of the same type in a foreign jurisdiction if the domestication is authorized by the law of the foreign jurisdiction.

(b) Except as otherwise provided in this section, by complying with the provisions of AS 10.55.501 - 10.55.506 applicable to foreign entities, a foreign entity may become a domestic entity of the same type in this state if the domestication is authorized by the law of the foreign entity's jurisdiction of organization.

(c) Unless the provision is amended after July 1, 2014, if a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a domestication, the provision applies to a domestication of the entity as if the domestication were a merger.

**Sec. 10.55.502. Plan of domestication.** (a) A domestic entity may become a foreign entity in a domestication by approving a plan of domestication. The plan must be in a record and contain

(1) the name and type of the domesticating entity;

- (2) the name and jurisdiction of organization of the domesticated entity;
  - (3) the manner of converting the interests in the domesticating entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of interests, securities, obligations, rights to acquire interests or securities, cash, or other property;
  - (4) the proposed public organic document of the domesticated entity, if the domesticated entity is a filing entity;
  - (5) the full text of the private organic rules of the domesticated entity that are proposed to be in a record;
  - (6) the other terms and conditions of the domestication; and
  - (7) any other provision required by the law of this state or the organic rules of the domesticating entity.
- (b) A plan of domestication may contain any other provision not prohibited by law.

**Sec. 10.55.503. Approval of domestication.** (a) A plan of domestication is not effective unless it has been approved

- (1) by a domestic domesticating entity
    - (A) in accordance with the requirements, if any, in the domestic domesticating entity's organic rules for approval of a domestication;
    - (B) if the domestic domesticating entity's organic rules do not provide for approval of a domestication, in accordance with the requirements, if any, in its organic law and organic rules for approval of
      - (i) in the case of an entity that is not a business corporation, a merger, as if the domestication were a merger; or
      - (ii) in the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the domestication were that type of merger; or
    - (C) if neither the domestic domesticating entity's organic law nor organic rules provide for approval of a domestication or a merger described in (B)(ii) of this paragraph, by all of the interest holders of the entity entitled to vote on or consent to any matter; and
  - (2) in a record, by each interest holder of a domestic domesticating entity that will have interest-holder liability for liabilities that arise after the domestication becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation,
    - (A) the organic rules of the entity in a record provide for the approval of a domestication or merger in which some or all of the entity's interest holders become subject to interest-holder liability by the vote or consent of fewer than all of the interest holders; and
    - (B) the interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.
- (b) A domestication of a foreign domesticating entity is not effective unless it is approved in accordance with the law of the foreign entity's jurisdiction of organization.

**Sec. 10.55.504. Amendment or abandonment of plan of domestication.** (a) A plan of domestication of a domestic domesticating entity may be amended

- (1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or
  - (2) by the governors or interest holders of the entity in the manner provided in the plan; however, an interest holder that was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change
    - (A) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, to be received by any of the interest holders of the domesticating entity under the plan;
    - (B) the public organic document or private organic rules of the domesticated entity that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the interest holders of the domesticated entity under its organic law or organic rules; or
    - (C) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.
- (b) After a plan of domestication has been approved by a domestic domesticating entity and before a statement of domestication becomes effective, the plan may be abandoned
- (1) as provided in the plan; or
  - (2) unless prohibited by the plan, in the same manner as the plan was approved.
- (c) If a plan of domestication is abandoned after a statement of domestication has been filed with the department and before the filing becomes effective, a statement of abandonment, signed on behalf of the entity, shall be filed with the department before the time the statement of domestication becomes effective. The statement of abandonment takes effect upon filing, and the domestication is abandoned and does not become effective. The statement of abandonment must contain
- (1) the name of the domesticating entity;

- (2) the date on which the statement of domestication was filed; and
- (3) a statement that the domestication has been abandoned in accordance with this section.

**Sec. 10.55.505. Statement of domestication; effective date.** (a) A statement of domestication shall be signed on behalf of the domesticating entity and filed with the department.

(b) A statement of domestication must contain

- (1) the name, jurisdiction of organization, and type of the domesticating entity;
  - (2) the name and jurisdiction of organization of the domesticated entity;
  - (3) if the statement of domestication is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;
  - (4) if the domesticating entity is a
    - (A) domestic entity, a statement that the plan of domestication was approved in accordance with AS 10.55.501 - 10.55.506; or
    - (B) foreign entity, a statement that the domestication was approved in accordance with the law of its jurisdiction of organization;
  - (5) if the domesticated entity is a domestic filing entity, the domesticated entity's public organic document, as an attachment;
  - (6) if the domesticated entity is a domestic limited liability partnership, the domesticated entity's statement of qualification, as an attachment; and
  - (7) if the domesticated entity is a foreign entity that is not a qualified foreign entity, a mailing address to which the department may send any process served on the commissioner under AS 10.55.506(e).
- (c) In addition to the requirements of (b) of this section, a statement of domestication may contain any other provision not prohibited by law.
- (d) If the domesticated entity is a domestic entity, the domesticated entity's public organic document, if any, must satisfy the requirements of the law of this state, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic document.
- (e) A plan of domestication that is signed on behalf of a domestic domesticating entity and meets all of the requirements of (b) of this section may be filed with the department instead of a statement of domestication and, on filing, has the same effect as a statement of domestication. If a plan of domestication is filed as provided in this subsection, references in this chapter to a statement of domestication refer to the plan of domestication filed under this subsection.
- (f) A statement of domestication becomes effective on the date and time of filing or the later date and time specified in the statement of domestication.

**Sec. 10.55.506. Effect of domestication.** (a) When a domestication becomes effective,

- (1) the domesticated entity is
  - (A) organized under and subject to the organic law of the domesticated entity; and
  - (B) the same entity without interruption as the domesticating entity;
- (2) all property of the domesticating entity continues to be vested in the domesticated entity without assignment, reversion, or impairment;
- (3) all liabilities of the domesticating entity continue as liabilities of the domesticated entity;
- (4) except as provided by law other than this chapter or the plan of domestication, all of the rights, privileges, immunities, powers, and purposes of the domesticating entity remain in the domesticated entity;
- (5) the name of the domesticated entity may be substituted for the name of the domesticating entity in any pending action or proceeding;
- (6) if the domesticated entity is a filing entity, the domesticated entity's public organic document is effective and is binding on its interest holders;
- (7) if the domesticated entity is a limited liability partnership, the domesticated entity's statement of qualification is effective simultaneously;
- (8) the private organic rules of the domesticated entity that are to be in a record, if any, approved as part of the plan of domestication are effective and are binding on and enforceable by
  - (A) the domesticated entity's interest holders; and
  - (B) in the case of a domesticated entity that is not a business corporation or nonprofit corporation, any other person that is a party to an agreement that is part of the domesticated entity's private organic rules; and
- (9) the interests in the domesticating entity are converted to the extent and as approved in connection with the domestication, and the interest holders of the domesticating entity are entitled only to the rights provided to them under the plan of domestication and to any dissenters' rights they have under AS 10.55.109 and the domesticating entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of the domesticating entity, the domestication does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding up of the domesticating entity.

(c) When a domestication becomes effective, a person that did not have interest-holder liability with respect to the domesticating entity and that becomes subject to interest-holder liability with respect to a domestic entity as a result of the domestication has interest-holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the domestication becomes effective.

(d) When a domestication becomes effective,

(1) the domestication does not discharge any interest-holder liability under the organic law of a domestic domesticating entity to the extent the interest-holder liability arose before the domestication became effective;

(2) a person does not have interest-holder liability under the organic law of a domestic domesticating entity for any liability that arises after the domestication becomes effective;

(3) the organic law of a domestic domesticating entity continues to apply to the release, collection, or discharge of any interest-holder liability preserved under (1) of this subsection as if the domestication had not occurred; and

(4) a person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of a domestic domesticating entity with respect to any interest-holder liability preserved under (1) of this subsection as if the domestication had not occurred.

(e) When a domestication becomes effective, a foreign entity that is the domesticated entity

(1) may be served with process in this state for the collection and enforcement of any of the foreign entity's liabilities; and

(2) appoints the commissioner as the foreign entity's agent for service of process for collecting or enforcing those liabilities.

(f) If the domesticating entity is a qualified foreign entity, the certificate of authority or other foreign qualification of the domesticating entity is cancelled when the domestication becomes effective.

(g) A domestication does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

## **ARTICLE 6. FILINGS**

### **Section**

**601. Requirements for documents**

**602. Forms**

**603. Filing, service, and copying fees**

**604. Effective time and date of document**

**605. Correcting filed document**

**606. Filing duty of department**

**607. Appeal from refusal to file a document**

**608. Evidentiary effect of copy of filed document**

**609. Penalty for signing false document**

**610. Interrogatories by department; judicial review**

**615. Confidentiality of information disclosed by interrogatories**

**620. Failure or refusal to answer interrogatories**

**625. Powers of department**

**Sec. 10.55.601. Requirements for documents.** (a) To be entitled to filing by the department under this chapter, a document must satisfy the following requirements and the requirements of any other provision of this chapter that adds to or varies these requirements:

(1) this chapter must require or permit filing the document with the department;

(2) the document must contain the information required by this chapter and may contain other information;

(3) the document must be in a record;

(4) the document must be in the English language; however, the name of an entity need not be in English if written in English letters or Arabic or Roman numerals;

(5) the document must be signed

(A) by an officer of a domestic or foreign corporation;

(B) by a person authorized by a domestic or foreign entity that is not a corporation; or

(C) if the entity is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary;

(6) the document must state the name and capacity of the person that signed it; the document may contain a corporate seal, attestation, acknowledgment, or verification; and

(7) the document must be delivered to the department for filing; delivery may be made by electronic transmission if and to the extent permitted by the department; if a document is filed in typewritten or printed form and not transmitted electronically, the department may require one exact or conformed copy to be delivered with the document.

(b) When a document is delivered to the department for filing, the correct filing fee and any franchise tax, license fee, or penalty required to be paid for the filing by this chapter or other law must be paid or provision for payment made in a manner permitted by the department.

**Sec. 10.55.602. Forms.** The department may prescribe and furnish on request forms for documents required or permitted to be filed by this chapter, but their use is not mandatory.

**Sec. 10.55.603. Filing, service, and copying fees.** (a) The department shall collect a fee each time process is served on the commissioner under this chapter. The party to a proceeding causing service of process may recover this fee as costs if the party prevails in the proceeding.

(b) The department shall collect the fees for copying and certifying the copy of any document filed under this chapter for copying and for the certificate.

(c) The department shall collect fees when the following documents are delivered for filing:

- (1) statement of merger;
- (2) statement of abandonment of merger;
- (3) statement of interest exchange;
- (4) statement of abandonment of interest exchange;
- (5) statement of conversion;
- (6) statement of abandonment of conversion;
- (7) statement of domestication;
- (8) statement of abandonment of domestication.

(d) The department shall establish by regulation under AS 44.62 (Administrative Procedure Act) the amount of the fees to be collected under this section.

**Sec. 10.55.604. Effective time and date of document.** Except as provided in AS 10.55.605, a document accepted for filing is effective

(1) at the date and time of filing, as evidenced by the means used by the department for recording the date and time of filing;

(2) at the time specified in the document as its effective time on the date it is filed;

(3) at a specified delayed effective time and date, if permitted by this chapter; or

(4) if a delayed effective date but no time is specified, at the close of business on the date specified.

**Sec. 10.55.605. Correcting filed document.** (a) A domestic or foreign entity may correct a document filed by the department if

(1) the document contains an inaccuracy;

(2) the document was defectively signed; or

(3) the electronic transmission of the document to the department was defective.

(b) A document is corrected by filing with the department a statement of correction that

(1) describes the document to be corrected and states the filing date of the document to be corrected or has attached a copy of the document;

(2) specifies the inaccuracy or defect to be corrected; and

(3) corrects the inaccuracy or defect.

(c) A statement of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, a statement of correction is effective when filed.

**Sec. 10.55.606. Filing duty of department.** (a) A document delivered to the department for filing that satisfies the requirements of AS 10.55.601 shall be filed by the department.

(b) The department files a document by recording it as filed on the date and time of receipt. After filing a document, the department shall deliver to the domestic or foreign entity or its representative a copy of the document with an acknowledgment of the date and time of filing.

(c) If the department refuses to file a document, the department shall return the document to the domestic or foreign entity or its representative within 10 days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

(d) The duty of the department to file documents under this section is ministerial. The filing or refusal to file a document does not

- (1) affect the validity or invalidity of the document in whole or in part;
- (2) relate to the correctness or incorrectness of information contained in the document; or
- (3) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

**Sec. 10.55.607. Appeal from refusal to file a document.** (a) If the department refuses to file a document delivered for filing, the domestic or foreign entity that submitted the document for filing may, within 30 days after the return of the document, appeal the refusal to the superior court of the judicial district where the entity's principal office, or, if the entity does not have a principal office in this state, where its registered office is or will be located. The appeal is begun by petitioning the court to compel filing the document and by attaching to the petition the document and the explanation of the department for the refusal to file.

(b) The court may summarily order the department to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

**Sec. 10.55.608. Evidentiary effect of copy of filed document.** A certificate from the department, delivered with a copy of a document filed by the department, conclusively establishes that the original document is on file with the department.

**Sec. 10.55.609. Penalty for signing false document.** A person who signs a document the person knows is false in any material respect with intent that the document be delivered to the department for filing under this chapter is guilty of a class A misdemeanor.

**Sec. 10.55.610. Interrogatories by department; judicial review.** (a) The department may propound to a domestic or foreign entity that is a party to a transaction under this chapter interrogatories reasonably necessary and proper to enable the department to ascertain whether the entity has complied with the provisions of this chapter.

(b) Interrogatories shall be answered within 30 days or within the additional time fixed by the department. Answers shall be full and complete, in writing and under oath. If the interrogatories are directed to an individual, the interrogatories shall be answered by that person, and, if directed to an entity, the interrogatories shall be answered by the president, vice-president, secretary, or assistant secretary of the corporation or, in the instance of a foreign corporation, the person or persons functioning as comparable officers in accordance with the laws of the state of incorporation.

(c) A petition stating good cause to extend the date to answer, modify, or set aside the interrogatories propounded by the department or to enforce compliance with AS 10.55.620 may be filed in the superior court before the expiration of the 30 days fixed in this section for answer.

**Sec. 10.55.615. Confidentiality of information disclosed by interrogatories.** Interrogatories and answers propounded and obtained under AS 10.55.610 are not open to public inspection and the department may not disclose facts or information obtained from the interrogatories except as the official duty of the department requires or unless the interrogatories or the answers are required for evidence in criminal proceedings or other action by the state.

**Sec. 10.55.620. Failure or refusal to answer interrogatories.** Unless otherwise provided by an order of court issued in response to a petition filed under AS 10.55.610 ,

(1) an entity that fails or refuses to answer truthfully and fully interrogatories propounded by the department within the time prescribed by AS 10.55.610 (b) is guilty of a class A misdemeanor; and

(2) the department need not file a document to which the interrogatories relate until the interrogatories are properly answered and need not file a document to which the interrogatories relate if the answers disclose that the document does not conform to the provisions of this chapter.

**Sec. 10.55.625. Powers of department.** The department has the power reasonably necessary to perform the duties required by this chapter.

## ARTICLE 7. MISCELLANEOUS PROVISIONS

### Section

**701. Consistency of application**

**702. Relation to Electronic Signatures in Global and National Commerce Act**

**Sec. 10.55.701. Consistency of application.** In applying and construing this chapter, consideration shall be given to the need to promote consistency of the law with respect to its subject matter among states that enact it.

**Sec. 10.55.702. Relation to Electronic Signatures in Global and National Commerce Act.** This chapter modifies, limits, and supersedes 15 U.S.C. 7001 - 7031 (Electronic Signatures in Global and National Commerce Act), but does not modify, limit, or supersede 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).

## ARTICLE 8. DEFINITIONS AND TITLE

### Section

#### 901. Definitions

#### 902. Short title

**Sec. 10.55.901. Definitions.** In this chapter,

- (1) "acquired entity" means the entity, all of one or more classes or series of interests in which are acquired in an interest exchange;
- (2) "acquiring entity" means the entity that acquires all of one or more classes or series of interests of the acquired entity in an interest exchange;
- (3) "approve" means, in the case of an entity, for its governors and interest holders to take whatever steps are necessary under its organic rules, organic law, and other law to
  - (A) propose a transaction subject to this chapter;
  - (B) adopt and approve the terms and conditions of the transaction; and
  - (C) conduct any required proceedings or otherwise obtain any required votes or consents of the governors or interest holders;
- (4) "business corporation" means a corporation whose internal affairs are governed by AS 10.06;
- (5) "commissioner" means the commissioner of commerce, community, and economic development;
- (6) "conversion" means a transaction authorized by AS 10.55.401 - 10.55.406;
- (7) "converted entity" means the converting entity as it continues in existence after a conversion;
- (8) "converting entity" means the domestic entity that approves a plan of conversion under AS 10.55.403 or the foreign entity that approves a conversion under the law of its jurisdiction of organization;
- (9) "department" means the Department of Commerce, Community, and Economic Development;
- (10) "domesticated entity" means the domesticating entity as it continues in existence after a domestication;
- (11) "domesticating entity" means the domestic entity that approves a plan of domestication under AS 10.55.503 or the foreign entity that approves a domestication under the law of its jurisdiction of organization;
- (12) "domestication" means a transaction authorized by AS 10.55.501 - 10.55.506;
- (13) "domestic entity" means an entity whose internal affairs are governed by the law of this state;
- (14) "entity" means
  - (A) a business corporation;
  - (B) a nonprofit corporation;
  - (C) a general partnership, including a limited liability partnership;
  - (D) a limited partnership, including a limited liability limited partnership;
  - (E) a limited liability company;
  - (F) a business trust or statutory trust entity;
  - (G) an unincorporated nonprofit association;
  - (H) a cooperative; or
  - (I) any other person that has a separate legal existence or has the power to acquire an interest in real property in its own name, other than
    - (i) an individual;
    - (ii) a testamentary, inter vivos, or charitable trust, with the exception of a trust that carries on a business;
    - (iii) an association or relationship that is not a partnership solely by reason of AS 32.06.202(c) (Uniform Partnership Act) or a similar provision of the law of any other jurisdiction;
    - (iv) a decedent's estate; or
    - (v) a government, a governmental subdivision, agency, or instrumentality, or a quasi-governmental instrumentality;
- (15) "filing entity" means an entity that is created by the filing of a public organic document;
- (16) "foreign entity" means an entity other than a domestic entity;

- (17) "governance interest" means the right under the organic law or organic rules of an entity, other than as a governor, agent, assignee, or proxy, to
- (A) receive or demand access to information concerning, or the books and records of, the entity;
  - (B) vote for the election of the governors of the entity; or
  - (C) receive notice of or vote on any or all issues involving the internal affairs of the entity;
- (18) "governor" means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed under the organic law and organic rules of the entity;
- (19) "interest" means
- (A) a governance interest in an unincorporated entity;
  - (B) a transferable interest in an unincorporated entity; or
  - (C) a share or membership in a corporation;
- (20) "interest exchange" means a transaction authorized by AS 10.55.301 - 10.55.306;
- (21) "interest holder" means a direct holder of an interest;
- (22) "interest-holder liability" means
- (A) personal liability for a liability of an entity that is imposed on a person
    - (i) solely by reason of the status of the person as an interest holder; or
    - (ii) by the organic rules of the entity under a provision of the organic law authorizing the organic rules to make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or
  - (B) an obligation of an interest holder under the organic rules of an entity to contribute to the entity;
- (23) "jurisdiction of organization" of an entity means the jurisdiction whose law includes the organic law of the entity;
- (24) "liability" means a debt, obligation, or any other liability arising in any manner, regardless of whether it is secured or whether it is contingent;
- (25) "merger" means a transaction in which two or more merging entities are combined into a surviving entity under a filing with the department;
- (26) "merging entity" means an entity that is a party to a merger and exists immediately before the merger becomes effective;
- (27) "nonprofit corporation" means a corporation whose internal affairs are governed by AS 10.20 (Alaska Nonprofit Corporation Act);
- (28) "organic law" means the statutes, if any, other than this chapter, governing the internal affairs of an entity;
- (29) "organic rules" means the public organic document and private organic rules of an entity;
- (30) "person" means an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;
- (31) "plan" means a plan of merger, interest exchange, conversion, or domestication;
- (32) "private organic rules" means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic document, if any;
- (33) "protected agreement" means
- (A) a record evidencing indebtedness and any related agreement in effect on July 1, 2014;
  - (B) an agreement that is binding on an entity on July 1, 2014;
  - (C) the organic rules of an entity in effect on July 1, 2014; or
  - (D) an agreement that is binding on any of the governors or interest holders of an entity on July 1, 2014;
- (34) "public organic document" means the public record, the filing of which creates an entity, and any amendment to or restatement of that record;
- (35) "qualified foreign entity" means a foreign entity that is authorized to transact business in this state under a filing with the department;
- (36) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;
- (37) "sign" means, with present intent to authenticate or adopt a record,
- (A) to execute or adopt a tangible symbol; or
  - (B) to attach to or logically associate with the record an electronic sound, symbol, or process;
- (38) "surviving entity" means the entity that continues in existence after or is created by a merger;
- (39) "transferable interest" means the right under an entity's organic law to receive distributions from the entity;
- (40) "type," with regard to an entity, means a generic form of entity
- (A) recognized at common law; or
  - (B) organized under an organic law, whether or not some entities organized under that organic law are subject to provisions of that law that create different categories of the form of entity.

**Sec. 10.55.902. Short title.** This chapter may be cited as the Alaska Entity Transactions Act.

**TITLE 32.  
PARTNERSHIP**

**Chapter**

**06. Uniform Partnership Act (§§ 32.06.201 – 32.06.997)**

**11. Uniform Limited Partnership Act (§§ 32.11.010 – 32.11.990)**

**CHAPTER 05.  
UNIFORM PARTNERSHIP ACT  
*[Repealed, Sec. 8 ch 115 SLA 2000.]***

**CHAPTER 06.  
UNIFORM PARTNERSHIP ACT**

**Article**

- 1. Nature and Property of Partnership (§§ 32.06.201 – 32.06.204)**
- 2. Relations of Partners to Persons Dealing with Partnership (§§ 32.06.301 – 32.06.308)**
- 3. Relations of Partners to Each Other and to Partnership (§§ 32.06.401 – 32.06.406)**
- 4. Transferable Interests, Transferees, and Creditors of Partnerships (§§ 32.06.501 – 32.06.504)**
- 5. Partner's Dissociation (§§ 32.06.601 – 32.06.603)**
- 6. Partner's Dissociation when Business not Wound Up (§§ 32.06.701 – 32.06.705)**
- 7. Winding Up Partnership Business (§§ 32.06.801 – 32.06.807)**
- 8. Conversions and Mergers (§§ 32.06.902 – 32.06.909)**
- 9. Limited Liability Partnerships (§§ 32.06.911 – 32.06.925)**
- 10. Miscellaneous Provisions (§§ 32.06.955 – 32.06.985)**
- 11. General Provisions (§§ 32.06.990 – 32.06.997)**

**ARTICLE 1.  
NATURE AND PROPERTY OF PARTNERSHIP**

**Section**

- 201. Partnership as entity**
- 202. Formation of partnership**
- 203. Partnership property**
- 204. When property is partnership property**

**Sec. 32.06.201. Partnership as entity.** (a) A partnership is an entity distinct from its partners.

(b) A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under AS 32.06.911.

**Sec. 32.06.202. Formation of partnership.** (a) Except as otherwise provided in (b) of this section, the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

(b) An association formed under a statute other than this chapter, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this chapter.

(c) In determining whether a partnership is formed, the following rules apply:

(1) joint tenancy, tenancy in common, tenancy by the entirety, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property;

(2) the sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived;

(3) a person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits are received in payment

(A) of a debt by installments or otherwise;

(B) for services as an independent contractor, or of wages or other compensation to an employee;

(C) of rent;

(D) of an annuity or other retirement or health benefit provided to a beneficiary, representative, or designee of a deceased or retired partner;

(E) of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or

(F) for the sale of the good will of a business or other property by installments or otherwise.

**Sec. 32.06.203. Partnership property.** Property acquired by a partnership is property of the partnership and not of the partners individually.

**Sec. 32.06.204. When property is partnership property.** (a) Property is partnership property if acquired in the name of

(1) the partnership; or

(2) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(b) Property is acquired in the name of the partnership by a transfer to

(1) the partnership in its name; or

(2) one or more partners in their capacity as partners in the partnership if the name of the partnership is indicated in the instrument transferring title to the property.

(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(d) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property even if used for partnership purposes.

## ARTICLE 2. RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

### Section

**301. Partner as agent of partnership**

**302. Transfer and recovery of partnership property**

**303. Statement of partnership authority**

**304. Statement of denial**

**305. Partnership liable for partner's actionable conduct**

**306. Partner's liability**

**307. Actions by and against partnership and partners**

**308. Liability of purported partner**

**Sec. 32.06.301. Partner as agent of partnership.** Subject to the effect of a statement of partnership authority under AS 32.06.303,

(1) each partner is an agent of the partnership for the purpose of its business; an act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner does not have authority to act for the partnership in the particular matter and the person with whom the partner is dealing knows or has received a notification that the partner lacks authority;

(2) an act of a partner that is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership does not bind the partnership unless the act was authorized by the other partners.

**Sec. 32.06.302. Transfer and recovery of partnership property.** (a) Subject to the effect of a statement of partnership authority under AS 32.06.303, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

(b) Partnership property held in the name of one or more partners, with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(c) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(d) A partnership may recover partnership property from a transferee only if the partnership proves that execution of the instrument of initial transfer did not bind the partnership under AS 32.06.301 and

(1) as to a subsequent transferee who gave value for property transferred under (a) or (b) of this section, that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

(2) as to a transferee who gave value for property transferred under (c) of this section, that the transferee knew or had received a notification that the property was partnership property, and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(e) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property under (d) of this section from an earlier transferee of the property.

(f) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in the person. The person may execute a document in the name of the partnership to evidence vesting of the property in the person and may file or record the document.

**Sec. 32.06.303. Statement of partnership authority.** (a) A partnership may file a statement of partnership authority that

(1) must include

(A) the name of the partnership;

(B) the street address of its chief executive office and an office in this state, if there is one;

(C) the names and mailing addresses of all of the partners or an agent appointed and maintained by the partnership for the purpose of (b) of this section; and

(D) the names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(2) may state

(A) the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership; and

(B) any other matter.

(b) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

(c) If a filed statement of partnership authority is executed under AS 32.06.970(c) and states the name of the partnership but does not contain all of the other information required by (a) of this section, the statement nevertheless operates with respect to a person who is not a partner as provided in (d) and (e) of this section.

(d) Except as otherwise provided in (g) of this section, a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(1) except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on the grant of authority is not then contained in another filed statement; a filed cancellation of a limitation on authority revives the previous grant of authority;

(2) a grant of authority to transfer real property held in the name of the partnership and contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of the real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on the grant of authority is not then of record in the office for recording transfers of that real property; the recording, in the office for recording transfers of that real property, of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(e) A person who is not a partner is considered to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(f) Except as otherwise provided in (d) and (e) of this section and in AS 32.06.704 and 32.06.805, a person who is not a partner is not considered to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(g) Unless earlier cancelled, a filed statement of partnership authority is cancelled by operation of law five years after the date on which the statement or the most recent amendment is filed with the department.

**Sec. 32.06.304. Statement of denial.** A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent under AS 32.06.303(b) may file a statement of denial stating

the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority under AS 32.06.303(d) and (e).

**Sec. 32.06.305. Partnership liable for partner's actionable conduct.** (a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(b) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person who is not a partner and the money or property is misapplied by a partner, the partnership is liable for the loss.

**Sec. 32.06.306. Partner's liability.** (a) Except as otherwise provided in (b) and (c) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(b) A person admitted as a partner into an existing partnership is not personally liable for a partnership obligation incurred before the person's admission as a partner.

(c) An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, in tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for the obligation solely by reason of being or acting as a partner. This subsection applies even if inconsistent with a partnership agreement provision that exists immediately before the vote required to become a limited liability partnership under AS 32.06.911(b).

**Sec. 32.06.307. Actions by and against partnership and partners.** (a) A partnership may sue and be sued in the name of the partnership.

(b) An action may be brought against a partnership and, to the extent not inconsistent with AS 32.06.306, any or all of the partners in the same action or in separate actions.

(c) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(d) A judgment creditor of a partner may not execute against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under AS 32.06.306 and

(1) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(2) the partnership is a debtor in bankruptcy;

(3) the partner has agreed that the creditor is not required to exhaust partnership assets;

(4) a court grants permission to the judgment creditor to execute against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(5) liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under AS 32.06.308.

**Sec. 32.06.308. Liability of purported partner.** (a) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons who are not partners, the purported partner is liable to a person to whom the representation is made if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to the liability as if the purported partner were a partner. If partnership liability does not result, the purported partner is liable with respect to the liability jointly and severally with any other person consenting to the representation.

(b) If under (a) of this section a person is represented to be a partner in an existing partnership, or with one or more persons who are not partners, the purported partner is an agent of the persons consenting to the representation to bind those persons to the same extent and in the same manner as if the purported partner were a partner with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(c) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

(d) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

(e) Except as otherwise provided in (a) and (b) of this section, persons who are not partners as to each other are not liable as partners to other persons.

### **ARTICLE 3. RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP**

#### **Section**

**401. Partner's rights and duties**

**402. Distributions in kind**

**403. Partner's rights and duties with respect to information**

**404. General standards of partner's conduct**

**405. Actions by partnership and partners**

**406. Continuation of partnership beyond definite term or particular undertaking**

**Sec. 32.06.401. Partner's rights and duties.** (a) Each partner is considered to have an account that is

(1) credited with an amount equal to

(A) the money and the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership; and

(B) the partner's share of the partnership profits; and

(2) charged with an amount equal to

(A) the money and the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner; and

(B) the partner's share of the partnership losses.

(b) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(c) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of the partnership's business or property.

(d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(e) A payment or advance made by a partner that results in a partnership obligation under (c) or (d) of this section constitutes a loan to the partnership that accrues interest from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(i) Except as provided in AS 10.55 (Alaska Entity Transactions Act), a person may become a partner only with the consent of all the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all the partners.

(k) This section does not affect the obligations of a partnership to other persons under AS 32.06.301.

**Sec. 32.06.402. Distributions in kind.** A partner does not have a right to receive, and may not be required to accept, a distribution in kind.

**Sec. 32.06.403. Partner's rights and duties with respect to information.** (a) A partnership shall keep its records, if any, at its chief executive office.

(b) A partnership shall provide partners and their agents and attorneys access to its records. It shall provide former partners and their agents and attorneys access to records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy records during ordinary business hours. A partnership may impose a reasonable charge covering the costs of labor and material for copies of documents furnished.

(c) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability

(1) without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this chapter; and

(2) on demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

**Sec. 32.06.404. General standards of partner's conduct.** (a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care stated in (b) and (c) of this section.

(b) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(1) to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

(2) to refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and

(3) to refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(c) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A partner shall discharge the duties to the partnership and the other partners under this chapter and the duties under the partnership agreement and exercise any rights in accordance with the obligation of good faith and fair dealing.

(e) Each partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(f) A partner may lend money to and transact other business with the partnership, and the rights and obligations of the partner are the same with regard to the loan or transaction as the rights and obligations of a person who is not a partner, subject to other applicable law.

(g) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

**Sec. 32.06.405. Actions by partnership and partners.** (a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting of partnership business, to enforce

(1) the partner's rights under the partnership agreement;

(2) the partner's rights under this chapter, including the partner's

(A) rights under AS 32.06.401, 32.06.403, or 32.06.404;

(B) right on dissociation to have the partner's interest in the partnership purchased under AS 32.06.701 or to enforce any other right under AS 32.06.601 - 32.06.603 or 32.06.701 - 32.06.705; or

(C) right to compel a dissolution and winding up of the partnership business under AS 32.06.801 or to enforce another right under AS 32.06.801 - 32.06.807; or

(3) the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section are governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

**Sec. 32.06.406. Continuation of partnership beyond definite term or particular undertaking.** (a) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion to the extent consistent with a partnership at will.

(b) If the partners, or the partners who habitually acted in the business during the term or undertaking, continue the business without a settlement or liquidation of the partnership, the partners continuing the business are presumed to have agreed that the partnership will continue.

**ARTICLE 4.**  
**TRANSFERABLE INTERESTS, TRANSFEREES, AND**  
**CREDITORS OF PARTNERSHIPS**

**Section**

- 501. Partner not co-owner of partnership property**
- 502. Partner's transferable interest in partnership**
- 503. Transfer of partner's transferable interest**
- 504. Partner's transferable interest subject to charging order**

**Sec. 32.06.501. Partner not co-owner of partnership property.** A partner is not a co-owner of partnership property and does not have an interest in partnership property that can be transferred, either voluntarily or involuntarily.

**Sec. 32.06.502. Partner's transferable interest in partnership.** Except as provided in AS 10.55 (Alaska Entity Transactions Act), the only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest of a partner, whether or not transferable, is personal property.

**Sec. 32.06.503. Transfer of partner's transferable interest.** (a) A transfer, in whole or in part, of a partner's transferable interest in the partnership

(1) is permissible;

(2) does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and

(3) does not, as against the other partners or the partnership, entitle the transferee during the continuance of the partnership to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership records.

(b) A transferee of a partner's transferable interest in the partnership has a right to

(1) receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(2) receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(3) seek under AS 32.06.801(6) a judicial determination that it is equitable to wind up the partnership business.

(c) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

(d) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

(e) A partnership is not required to give effect to a transferee's rights under this section until it has notice of the transfer.

(f) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

**Sec. 32.06.504. Partner's transferable interest subject to charging order.** (a) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or that the circumstances of the case may require.

(b) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, an interest charged may be redeemed

(1) by the judgment debtor;

(2) with property other than partnership property by one or more of the other partners; or

(3) with partnership property by one or more of the other partners with the consent of all of the partners whose interests are not charged.

(d) This chapter does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

**ARTICLE 5.**  
**PARTNER'S DISSOCIATION**

**Section**

**601. Events causing partner's dissociation**

**602. Partner's power to dissociate; wrongful dissociation**

**603. Effect of partner's dissociation**

**Sec. 32.06.601. Events causing partner's dissociation.** A partner is dissociated from a partnership upon the occurrence of any of the following events:

(1) when the partnership has notice of the partner's express will to withdraw as a partner unless a later date is specified by the partner;

(2) an event agreed to in the partnership agreement as causing the partner's dissociation;

(3) the partner's expulsion under the partnership agreement;

(4) the partner's expulsion by the unanimous vote of the other partners if

(A) it is unlawful to carry on the partnership business with that partner;

(B) there has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest that has not been foreclosed;

(C) within 90 days after the partnership notifies a corporate partner that it will be expelled because the corporate partner has filed a certificate of dissolution or the equivalent, the corporate partner's charter has been revoked, or the corporate partner's right to conduct business has been suspended by the jurisdiction of its incorporation, the certificate of dissolution is not revoked or the charter or right to conduct business is not reinstated; or

(D) the partner is a partnership that has been dissolved and its business is being wound up;

(5) on application by the partnership or another partner, the partner's expulsion by judicial determination because the partner

(A) engaged in wrongful conduct that adversely and materially affected the partnership business;

(B) wilfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under AS 32.06.404; or

(C) engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with the partner;

(6) the partner

(A) becomes a debtor in bankruptcy;

(B) executes an assignment for the benefit of creditors;

(C) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(D) fails, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property, obtained without the partner's consent or acquiescence, or fails within 90 days after the expiration of a stay to have the appointment vacated;

(7) in the case of a partner who is an individual,

(A) the partner's death;

(B) the appointment of a guardian or general conservator for the partner; or

(C) a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) in the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but the substitution of a successor trustee does not by itself qualify as a distribution under this paragraph;

(9) in the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but the substitution of a successor personal representative does not by itself qualify as a distribution under this paragraph; or

(10) termination of a partner who is not an individual, a partnership, a corporation, a trust, or an estate.

**Sec. 32.06.602. Partner's power to dissociate; wrongful dissociation.** (a) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will under AS 32.06.601(1).

(b) A partner's dissociation is wrongful only if

(1) the dissociation breaches an express provision of the partnership agreement; or

(2) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking,

(A) the partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under AS 32.06.601(6) - (10) or wrongful dissociation under this subsection;

(B) the partner is expelled by judicial determination under AS 32.06.601(5);

(C) the partner is dissociated by becoming a debtor in bankruptcy; or

(D) in the case of a partner who is not an individual, a trust other than a business trust, or an estate, the partner is expelled or otherwise dissociated because it wilfully dissolved or terminated.

(c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

**Sec. 32.06.603. Effect of partner's dissociation.** (a) If a partner's dissociation results in a dissolution and winding up of the partnership business, AS 32.06.801 - 32.06.807 apply, otherwise AS 32.06.701 - 32.06.705 apply.

(b) Upon a partner's dissociation, the partner's

(1) right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in AS 32.06.803;

(2) duty of loyalty under AS 32.06.404(b)(3) terminates; and

(3) duty of loyalty under AS 32.06.404(b)(1) and (2) and duty of care under AS 32.06.404(c) continue only with regard to matters arising and events occurring before the partner's dissociation unless the partner participates in winding up the partnership's business under AS 32.06.803.

## ARTICLE 6.

### PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

#### Section

**701. Purchase of dissociated partner's interest**

**702. Dissociated partner's power to bind and liability to partnership**

**703. Dissociated partner's liability to other persons**

**704. Statement of dissociation**

**705. Continued use of partnership name**

**Sec. 32.06.701. Purchase of dissociated partner's interest.** (a) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under AS 32.06.801, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buy-out price determined under (b) of this section.

(b) The buy-out price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under AS 32.06.807(b) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and if the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under AS 32.06.602(b), and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership must be offset against the buy-out price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify against all partnership liabilities a dissociated partner whose interest is being purchased, whether the liabilities are incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under AS 32.06.702.

(e) If an agreement for the purchase of a dissociated partner's interest is not reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buy-out price and accrued interest, reduced by any offsets and accrued interest under (c) of this section.

(f) If a deferred payment is authorized under (h) of this section, the partnership may tender a written offer to pay the amount it estimates to be the buy-out price and accrued interest, reduced by any offsets under (c) of this section, stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(g) The payment or tender required by (e) or (f) of this section must be accompanied by

(1) a statement of partnership assets and liabilities as of the date of dissociation;

(2) the latest available partnership balance sheet and income statement, if any;

(3) an explanation of how the estimated amount of the payment was calculated; and

(4) written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buy-out price, any offsets under (c) of this section, or other terms of the obligation to purchase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buy-out price until the expiration of the term or completion of the undertaking unless the partner establishes to the satisfaction of a court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(i) A dissociated partner may maintain an action against the partnership under AS 32.06.405(b)(2)(B) to determine the buy-out price of that partner's interest, any offsets under (c) of this section, or other terms of the obligation to purchase. The action must be commenced within 120 days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if a payment or offer to pay is not tendered. The court shall determine the buy-out price of the dissociated partner's interest, any offset due under (c) of this section, and accrued interest and enter judgment for any additional payment or refund. If deferred payment is authorized under (h) of this section, the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess attorney fees and costs under its court rules.

**Sec. 32.06.702. Dissociated partner's power to bind and liability to partnership.** (a) For two years after a partner dissociates without the dissociation resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under AS 32.06.905 - 32.06.908, is bound by an act of the dissociated partner that would have bound the partnership under AS 32.06.301 before dissociation only if, at the time of entering into the transaction, the other party

- (1) reasonably believed that the dissociated partner was then a partner;
- (2) did not have notice of the partner's dissociation; and
- (3) is not considered to have had knowledge under AS 32.06.303(e) or notice under AS 32.06.704(c).

(b) A dissociated partner is liable to the partnership for damage that is caused to the partnership by an obligation incurred by the dissociated partner after dissociation and for which the partnership is liable under (a) of this section.

**Sec. 32.06.703. Dissociated partner's liability to other persons.** (a) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in (b) of this section.

(b) A partner who dissociates without the dissociation resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under AS 32.06.905 - 32.06.908, within two years after the partner's dissociation only if the partner is liable for the obligation under AS 32.06.306 and, at the time of entering into the transaction, the other party

- (1) reasonably believed that the dissociated partner was then a partner;
- (2) did not have notice of the partner's dissociation; and
- (3) is not considered to have had knowledge under AS 32.06.303(e) or notice under AS 32.06.704(c).

(c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

**Sec. 32.06.704. Statement of dissociation.** (a) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of AS 32.06.303(d) and (e).

(c) In AS 32.06.702(a)(3) and 32.06.703(b)(3), a person who is not a partner is considered to have notice of the dissociation 90 days after the statement of dissociation is filed.

**Sec. 32.06.705. Continued use of partnership name.** Continued use of a partnership name, or of a dissociated partner's name as part of a partnership name, by partners continuing the business does not by itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

**ARTICLE 7.**  
**WINDING UP PARTNERSHIP BUSINESS**

**Section**

- 801. Events causing dissolution and winding up of partnership business**
- 802. Partnership continuation after dissolution**
- 803. Winding up partnership business**
- 804. Partner's power to bind partnership after dissolution**
- 805. Statement of dissolution**
- 806. Partner's liability to other partners after dissolution**
- 807. Settlement of accounts and contributions among partners**

**Sec. 32.06.801. Events causing dissolution and winding up of partnership business.** A partnership is dissolved, and its business must be wound up, only on the occurrence of any of the following events:

(1) in a partnership at will, when the partnership has notice from a partner, other than a partner who is dissociated under AS 32.06.601(2) - (10), of that partner's express will to withdraw as a partner, or on a later date specified by the partner;

(2) in a partnership for a definite term or particular undertaking,

(A) within 90 days after a partner's dissociation by death or by other event under AS 32.06.601(6) - (10) or by wrongful dissociation under AS 32.06.602(b), at least one-half of the remaining partners state their express will to wind up the partnership business; in this subparagraph, a partner's rightful dissociation under AS 32.06.602(b)(2)(A) constitutes the expression of that partner's will to wind up the partnership business;

(B) the express will of all of the partners to wind up the partnership business; or

(C) the expiration of the term or the completion of the undertaking;

(3) an event agreed to in the partnership agreement resulting in the winding up of the partnership business;

(4) an event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within 90 days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;

(5) on application by a partner, a judicial determination that

(A) the economic purpose of the partnership is likely to be unreasonably frustrated;

(B) another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner; or

(C) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

(6) on application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business

(A) after the expiration of the term or completion of the undertaking if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(B) at any time if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

**Sec. 32.06.802. Partnership continuation after dissolution.** (a) Subject to (b) of this section, a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

(b) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event,

(1) the partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and

(2) the rights of a third party accruing under AS 32.06.804(1) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

**Sec. 32.06.803. Winding up partnership business.** (a) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but, on application of a partner, partner's legal representative, or transferee, the superior court, for good cause shown, may order judicial supervision of the winding up.

(b) The legal representative of the last surviving partner may wind up a partnership's business.

(c) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or

administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership under AS 32.06.807, settle disputes by mediation or arbitration, and perform other necessary acts.

**Sec. 32.06.804. Partner's power to bind partnership after dissolution.** Subject to AS 32.06.805, a partnership is bound by a partner's act after dissolution that

- (1) is appropriate for winding up the partnership business; or
- (2) would have bound the partnership under AS 32.06.301 before dissolution if the other party to the transaction did not have notice of the dissolution.

**Sec. 32.06.805. Statement of dissolution.** (a) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(b) A statement of dissolution cancels a filed statement of partnership authority for the purposes of AS 32.06.303(d) and is a limitation on authority under AS 32.06.303(e).

(c) Under AS 32.06.301 and 32.06.804, a person who is not a partner is considered to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 90 days after it is filed.

(d) After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority that will operate with respect to a person who is not a partner under AS 32.06.303(d) and (e) in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

**Sec. 32.06.806. Partner's liability to other partners after dissolution.** (a) Except as otherwise provided in (b) of this section, after dissolution, a partner is liable to the other partners for the partner's share of any partnership liability incurred under AS 32.06.804.

(b) A partner who, with knowledge of the dissolution, incurs a partnership liability under AS 32.06.804(2) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

**Sec. 32.06.807. Settlement of accounts and contributions among partners.** (a) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under (b) of this section.

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account, but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under AS 32.06.306.

(c) If a partner fails to contribute, all of the other partners shall contribute the full amount required under (b) of this section, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which the partners are personally liable under AS 32.06.306. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under AS 32.06.306.

(d) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under AS 32.06.306.

(e) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(f) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

**ARTICLE 8.**  
**CONVERSIONS AND MERGERS**

**Section**

**905. Merger of partnerships**

**906. Effect of merger**

**907. Statement of merger**

**908. Nonexclusivity**

**Sec. 32.06.902. Conversion of partnership to limited partnership.** *[Repealed, Sec. 29 ch 60 SLA 2013.]*

**Sec. 32.06.903. Conversion of limited partnership to partnership.** *[Repealed, Sec. 29 ch 60 SLA 2013.]*

**Sec. 32.06.904. Effect of conversion; entity unchanged.** *[Repealed, Sec. 29 ch 60 SLA 2013.]*

**Sec. 32.06.905. Merger of partnerships.** (a) Under a plan of merger approved under (c) of this section, a partnership may be merged with one or more partnerships.

(b) The plan of merger must state

- (1) the name of each partnership that is a party to the merger;
- (2) the name of the surviving entity into which the other partnerships will merge;
- (3) the terms and conditions of the merger;

(4) the manner and basis of converting all or part of the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property; and

(5) the street address of the surviving entity's chief executive office.

(c) The plan of merger must be approved by all of the partners or a number or percentage specified for merger in the partnership agreement.

(d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(e) The merger takes effect on the later of

- (1) the approval of the plan of merger by all parties to the merger under (c) of this section;
- (2) the filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or
- (3) an effective date specified in the plan of merger.

(f) A merger in which a partnership and another form of entity are parties is governed by AS 10.55 (Alaska Entity Transactions Act).

**Sec. 32.06.906. Effect of merger.** (a) When a merger takes effect,

(1) the separate existence of every partnership that is a party to the merger, other than the surviving partnership, ceases;

(2) all property owned by each of the merged partnerships vests in the surviving partnership;

(3) all obligations of every partnership that is a party to the merger become the obligations of the surviving partnership; and

(4) an action or proceeding pending against a partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving partnership may be substituted as a party to the action or proceeding.

(b) The commissioner is the agent for service of process in an action or proceeding against a surviving foreign partnership to enforce an obligation of a domestic partnership that is a party to a merger. The surviving partnership shall promptly notify the department of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the department shall mail a copy of the process to the surviving foreign partnership.

(c) A partner of the surviving partnership is liable for

(1) all obligations of a party to the merger for which the partner was personally liable before the merger;

(2) all obligations of the surviving partnership incurred before the merger by a party to the merger and not covered by (1) of this subsection, but the obligations under this paragraph may be satisfied only out of property of the surviving partnership; and

(3) except as otherwise provided in AS 32.06.306, all obligations of the surviving partnership incurred after the merger takes effect.

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership, the general partners of the party to the merger immediately before the effective date of the merger shall contribute the amount necessary to satisfy the party's obligations to the surviving partnership in the manner provided in AS 32.06.807 as if the merged party were dissolved.

(e) As of the date the merger takes effect, a partner of a party to a merger who does not become a partner of the surviving partnership is dissociated from the entity of which that partner was a partner. A surviving partnership is bound under AS 32.06.702 by an act of a general partner dissociated under this subsection, and the partner is liable under AS 32.06.703 for transactions entered into by the surviving partnership after the merger takes effect.

**Sec. 32.06.907. Statement of merger.** (a) After a merger, the surviving partnership may file a statement that the parties to the merger have merged into the surviving partnership.

(b) A statement of merger must contain

- (1) the name of each partnership that is a party to the merger;
- (2) the name of the surviving partnership into which the other partnerships are merged; and
- (3) the street address of the surviving partnership's chief executive office and of any office in this state.

(c) Except as otherwise provided in (d) of this section, in AS 32.06.302, property of the surviving partnership that, before the merger, was held in the name of another party to the merger is property held in the name of the surviving partnership upon filing a statement of merger.

(d) In AS 32.06.302, real property of the surviving partnership that, before the merger, was held in the name of another party to the merger is property held in the name of the surviving partnership upon recording a certified copy of the statement of merger in the office for recording transfers of the real property.

(e) A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate under AS 32.06.970(c), stating the name of a partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving partnership, but not containing all of the other information required by (b) of this section, operates with respect to the partnerships named to the extent provided in (c) and (d) of this section.

**Sec. 32.06.908. Nonexclusivity.** AS 32.06.905 - 32.06.907 are not exclusive. Partnerships or limited partnerships may enter into mergers, interest exchanges, conversions, and domestications under AS 10.55 (Alaska Entity Transactions Act) or in any other manner provided by law.

**Sec. 32.06.909. Definitions for AS 32.06.902 - 32.06.908.** *[Repealed, Sec. 29 ch 60 SLA 2013.]*

## ARTICLE 9. LIMITED LIABILITY PARTNERSHIPS

### Section

**911. Change to limited liability partnership; statement of qualification**

**912. Name**

**913. Biennial report; revocation of qualification**

**921. Law governing foreign limited liability partnerships**

**922. Statement of foreign qualification**

**923. Effect of failure to have statement of foreign qualification**

**924. Activities not constituting transacting business**

**925. Action by attorney general**

**Sec. 32.06.911. Change to limited liability partnership; statement of qualification.** (a) A partnership may become a limited liability partnership under this section.

(b) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, by the vote necessary to amend those contribution provisions.

(c) After the approval required by (b) of this section, a partnership may become a limited liability partnership by filing a statement of qualification. The statement must contain

- (1) the name of the partnership;
- (2) the street address of the partnership's chief executive office and, if different, the street address of an office in this state, if any;
- (3) if the partnership does not have an office in this state, the name and street address of the partnership's agent for service of process;
- (4) a statement that the partnership elects to be a limited liability partnership; and
- (5) a deferred effective date, if any.

(d) The agent of a limited liability partnership for service of process must be an individual who is a resident of this state or a person authorized to do business in this state.

(e) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is cancelled under AS 32.06.970(d) or revoked under AS 32.06.913.

(f) The status of a partnership as a limited liability partnership and the liability of its partners are not affected by errors or later changes in the information required to be contained in the statement of qualification under (c) of this section.

(g) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

(h) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

**Sec. 32.06.912. Name.** The name of a limited liability partnership must end with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP."

**Sec. 32.06.913. Biennial report; revocation of qualification.** (a) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this state, shall file with the department a biennial report that contains

(1) the name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;

(2) the street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any; and

(3) if the partnership does not have an office in this state, the name and street address of the partnership's current agent for service of process.

(b) A biennial report is due before January 2 of the filing year. A partnership filing a statement of qualification, or a foreign partnership becoming authorized to transact business in this state, during an even-numbered year shall file the biennial report each even-numbered year. A partnership filing a statement of qualification, or a foreign partnership becoming authorized to transact business in this state, during an odd-numbered year shall file the biennial report each odd-numbered year. The biennial report is delinquent if not filed before February 1 of each odd- or even-numbered year as provided in this subsection.

(c) The department may revoke the statement of qualification of a partnership that fails to file a biennial report when due or pay the required filing fee. To revoke, the department shall provide the partnership at least 60 days' written notice of intent to revoke the statement. The notice must be mailed to the partnership at its chief executive office stated in the last filed statement of qualification or biennial report. The notice must specify the biennial report that has not been filed or the fee that has not been paid, and the effective date of the revocation. The revocation is not effective if the biennial report is filed and the fee is paid before the effective date of the revocation.

(d) A revocation under (c) of this section only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

(e) A partnership whose statement of qualification has been revoked may apply to the department for reinstatement within two years after the effective date of the revocation. The application must state

(1) the name of the partnership and the effective date of the revocation; and

(2) that the ground for revocation either did not exist or has been corrected.

(f) A reinstatement under (e) of this section relates back to and takes effect on the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred.

**Sec. 32.06.921. Law governing foreign limited liability partnerships.** (a) The law under which a foreign limited liability partnership is formed governs relations between and among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(b) A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of this state.

(c) A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in a business or exercise a power that a partnership may not engage in or exercise in this state as a limited liability partnership.

**Sec. 32.06.922. Statement of foreign qualification.** (a) Before transacting business in this state, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain

(1) the name of the foreign limited liability partnership that satisfies the requirements of the state or other jurisdiction under whose law it is formed and ends with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP";

(2) the street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any;

(3) if there is not an office of the partnership in this state, the name and street address of the partnership's agent for service of process; and

(4) a deferred effective date, if any.

(b) The agent of a foreign limited liability company for service of process must be an individual who is a resident of this state or a person authorized to do business in this state.

(c) The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is cancelled under AS 32.06.970(d) or revoked under AS 32.06.913.

(d) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

**Sec. 32.06.923. Effect of failure to have statement of foreign qualification.** (a) A foreign limited liability partnership transacting business in this state may not maintain an action or proceeding in this state unless it has in effect a statement of foreign qualification.

(b) The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this state.

(c) A limitation on personal liability of a partner is not waived solely by transacting business in this state without a statement of foreign qualification.

(d) If a foreign limited liability partnership transacts business in this state without a statement of foreign qualification, the commissioner is its agent for service of process with respect to a right of action arising out of the transaction of business in this state.

**Sec. 32.06.924. Activities not constituting transacting business.** (a) Activities of a foreign limited liability partnership that do not constitute transacting business under AS 32.06.921 - 32.06.925 include

(1) maintaining, defending, or settling an action or proceeding;

(2) holding meetings of its partners or carrying on another activity concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories for those securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders, whether by mail or through employees or agents or by another method, if the orders require acceptance outside this state before they become contracts;

(7) creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;

(8) collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;

(9) conducting an isolated transaction that is completed within 30 days and is not one transaction in the course of similar transactions; and

(10) transacting business in interstate commerce.

(b) In AS 32.06.921 - 32.06.925, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under (a) of this section, constitutes transacting business in this state.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under another law of this state.

**Sec. 32.06.925. Action by attorney general.** The attorney general may maintain an action to restrain a foreign limited liability partnership from transacting business in this state in violation of AS 32.06.921 - 32.06.925.

## ARTICLE 10. MISCELLANEOUS PROVISIONS

### Section

**955. Knowledge and notice**

**960. Effect of partnership agreement; nonwaivable provisions**

**965. Supplemental principles of law**

**970. Execution, filing, recording, amendment, and cancellation of statements**

**975. Governing law**

**985. Partnership subject to amendment or repeal of chapter**

**Sec. 32.06.955. Knowledge and notice.** (a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact if the person

(1) knows of it;

(2) has received a notification of it; or

(3) has reason to know it exists from all of the facts known to the person at the time in question.

(c) A person notifies or gives a notification to another person by taking steps reasonably required to inform the other person in the ordinary course of business, whether or not the other person learns of it.

(d) A person receives a notification when the notification

(1) comes to the person's attention; or

(2) is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(e) Except as otherwise provided in (f) of this section, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice of, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if the person maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(f) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

**Sec. 32.06.960. Effect of partnership agreement; nonwaivable provisions.** (a) Except as otherwise provided in (b) of this section, relations between and among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this chapter governs relations between and among the partners and between the partners and the partnership.

(b) The partnership agreement may not

(1) vary the rights and duties under AS 32.06.970 except to eliminate the duty to provide copies of statements to all of the partners;

(2) unreasonably restrict the right of access to records under AS 32.06.403(b);

(3) eliminate the duty of loyalty under AS 32.06.404(b) or 32.06.603(b)(3), but

(A) the partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or

(B) all of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(4) unreasonably reduce the duty of care under AS 32.06.404(c) or 32.06.603(b)(3);

(5) eliminate the obligation of good faith and fair dealing under AS 32.06.404(d), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(6) vary the power to dissociate as a partner under AS 32.06.602(a), except to require the notice under AS 32.06.601(1) to be in writing;

(7) vary the right of a court to expel a partner in the events specified in AS 32.06.601(5);

(8) vary the requirement to wind up the partnership business in cases under AS 32.06.801(4), (5), or (6);

(9) vary the law applicable to a limited liability partnership under AS 32.06.975(b); or

(10) restrict rights of third parties under this chapter.

**Sec. 32.06.965. Supplemental principles of law.** (a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is governed by AS 45.45.010.

**Sec. 32.06.970. Execution, filing, recording, amendment, and cancellation of statements.** (a) A statement may be filed with the department. A certified copy of a statement that is filed in an office in another state may be filed with the department. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in this state.

(b) A certified copy of a statement that has been filed with the department and recorded in the office for recording transfers of real property has the effect provided for recorded statements in this chapter. A recorded statement that is

not a certified copy of a statement filed with the department does not have the effect provided for recorded statements in this chapter.

(c) A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by this chapter. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.

(d) A person authorized by this chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(e) A person who files a statement under this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person who is not a partner.

(f) The department may collect a fee for filing or providing a certified copy of a statement.

**Sec. 32.06.975. Governing law.** (a) Except as otherwise provided in (b) of this section, the law of the jurisdiction where a partnership has its chief executive office governs the relations between and among the partners and between the partners and the partnership.

(b) The law of this state governs relations between and among the partners and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.

**Sec. 32.06.985. Partnership subject to amendment or repeal of chapter.** A partnership governed by this chapter is subject to an amendment or repeal of this chapter.

## ARTICLE 11. GENERAL PROVISIONS

### Section

**990. Uniformity of application and construction**

**995. Definitions**

**997. Short title**

**Sec. 32.06.990. Uniformity of application and construction.** This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

**Sec. 32.06.995. Definitions.** In this chapter, unless the context indicates otherwise,

- (1) "business" includes a trade, an occupation, or a profession;
- (2) "commissioner" means the commissioner of commerce, community, and economic development;
- (3) "debtor in bankruptcy" means a person who is the subject of
  - (A) an order for relief under 11 U.S.C. (Bankruptcy Code) or a comparable order under a successor statute of general application; or
  - (B) a comparable order under federal, state, or foreign law governing insolvency;
- (4) "department" means the Department of Commerce, Community, and Economic Development;
- (5) "distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee;
- (6) "foreign limited liability partnership" means a partnership that
  - (A) is formed under laws other than the laws of this state; and
  - (B) has the status of a limited liability partnership under those laws;
- (7) "limited liability partnership" or "domestic limited liability partnership" means a partnership that has filed a statement of qualification under AS 32.06.911 and does not have a similar statement in effect in another jurisdiction;
- (8) "partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under AS 32.06.202, predecessor law, or a comparable law of another jurisdiction;
- (9) "partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement;
- (10) "partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking;
- (11) "partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights;

(12) "person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(13) "property" means all property, including real, personal, mixed, tangible, or intangible property, or an interest in property;

(14) "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States;

(15) "statement" means a statement of partnership authority under AS 32.06.303, a statement of denial under AS 32.06.304, a statement of dissociation under AS 32.06.704, a statement of dissolution under AS 32.06.805, a statement of merger under AS 32.06.907, a statement of qualification under AS 32.06.911, a statement of foreign qualification under AS 32.06.922, or an amendment or cancellation of any of the foregoing;

(16) "transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance;

(17) "domestic partnership" means a partnership whose internal relations are governed by the laws of this state;

(18) "foreign partnership" means a partnership other than a domestic partnership;

(19) "surviving partnership" means a domestic or foreign partnership into which one or more domestic or foreign partnerships are merged, whether or not preexisting the merger or created by the merger.

**Sec. 32.06.997. Short title.** This chapter may be cited as the Uniform Partnership Act.

## CHAPTER 10.

### UNIFORM LIMITED PARTNERSHIP ACT

*[Repealed, Sec. 2 ch 128 SLA 1992. For present provisions, see AS 32.11].*

## CHAPTER 11.

### UNIFORM LIMITED PARTNERSHIP ACT

#### Article

1. **Formation and Conversion to Limited Partnership (§§ 32.11.010 – 32.11.090)**
2. **Limited Partners (§§ 32.11.100 – 32.11.140)**
3. **General Partners (§§ 32.11.150 – 32.11.190)**
4. **Contributions; Allocation of Profits, Losses, and Distributions (§§ 32.11.200 – 32.11.230)**
5. **Distributions, Withdrawal, and Return of Contribution (§§ 32.11.240 – 32.11.310)**
6. **Nature of and Assignment of Partnership Interests (§§ 32.11.320 – 32.11.360)**
7. **Dissolution (§§ 32.11.370 – 32.11.400)**
8. **Foreign Limited Partnerships (§§ 32.11.410 – 32.11.480)**
9. **Derivative Actions (§§ 32.11.490 – 32.11.520)**
10. **General Provisions (§§ 32.11.800 – 32.11.990)**

#### ARTICLE 1.

#### FORMATION AND CONVERSION TO LIMITED PARTNERSHIP

#### Section

10. **Formation of limited partnership**
20. **Amendment to certificate; restated certificate**
30. **Cancellation of certificate**
40. **Execution of certificates**
50. **Execution by judicial act**
60. **Filing with department**
70. **Liability for false statement in certificate**
80. **Scope of notice**
90. **Delivery of certificates to limited partners**

**Sec. 32.11.010. Formation of limited partnership.** (a) In order to form a limited partnership, a certificate of limited partnership shall be executed and filed with the Department of Commerce, Community, and Economic Development. The certificate must set out

(1) the name of the limited partnership;

(2) the address of the office and the name and address of the agent for service of process required to be maintained by AS 32.11.830;

(3) the name and business address of each general partner; and

(4) other matters the general partners determine to include.

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership with the department or at a later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

**Sec. 32.11.020. Amendment to certificate; restated certificate.** (a) A certificate of limited partnership is amended by filing a certificate of amendment with the department. The certificate must set out

(1) the name of the limited partnership;

(2) the date of filing the certificate to be amended; and

(3) the amendment to the certificate.

(b) Within 30 days after the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

(1) the admission of a new general partner;

(2) the withdrawal of a general partner; or

(3) the continuation of the business under AS 32.11.370 after an event of withdrawal of a general partner.

(c) A general partner who becomes aware that a statement in a certificate of limited partnership was false when made or that an arrangement or other fact described has changed, making the certificate inaccurate, shall promptly amend the certificate.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

(e) A person may not be held liable because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of an event referred to in (b) of this section if the amendment is filed within the 30-day period specified in (b) of this section.

(f) A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

(g) A certificate of limited partnership may also be amended by filing a plan of merger, interest exchange, conversion, or domestication under AS 10.55 (Alaska Entity Transactions Act).

**Sec. 32.11.030. Cancellation of certificate.** A certificate of limited partnership shall be canceled upon the dissolution and the commencement of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation shall be filed with the department and must set out

(1) the name of the limited partnership;

(2) the date of filing of its certificate of limited partnership;

(3) the reason for filing the certificate of cancellation;

(4) the effective date, which must be a date certain, of cancellation if it is not to be effective upon the filing of the certificate; and

(5) other information the general partners filing the certificate determine.

**Sec. 32.11.040. Execution of certificates.** (a) Each certificate required by AS 32.11.010 - 32.11.090 to be filed with the department shall be executed in the following manner:

(1) an original certificate of limited partnership shall be signed by all general partners;

(2) a certificate of amendment shall be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner; and

(3) a certificate of cancellation shall be signed by all general partners.

(b) A person may sign a certificate by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission of a general partner must specifically describe the admission.

(c) The execution of a certificate by a general partner constitutes an affirmation under the penalty of false swearing that the facts stated are true.

**Sec. 32.11.050. Execution by judicial act.** If a person required by AS 32.11.040 to execute a certificate fails or refuses to do so, a person who is adversely affected by the failure or refusal may petition the superior court to direct the execution of the certificate. If the court finds that it is proper for the certificate to be executed and that a person so designated has failed or refused to execute the certificate, it shall order the department to record an appropriate certificate.

**Sec. 32.11.060. Filing with department.** (a) An original and an exact copy of the certificate of limited partnership and of a certificate of amendment or cancellation, or of a judicial decree of amendment or cancellation, shall be delivered to the department. A person who executes a certificate as an agent or fiduciary need not exhibit

evidence of the person's authority as a prerequisite to filing. Unless the department finds that a certificate does not conform to law, upon receipt of all filing fees required by law the department shall

- (1) endorse on each original and exact copy the word "Filed" and the day, month, and year of the filing;
- (2) file the original in the department's office; and
- (3) return the exact copy to the person who filed it or the person's representative.

(b) Upon the filing of a certificate of amendment or judicial decree of amendment with the department, the certificate of limited partnership is amended, and upon the effective date of a certificate of cancellation or a judicial decree of cancellation, the certificate of limited partnership is canceled.

**Sec. 32.11.070. Liability for false statement in certificate.** If a certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from

(1) a person who executes the certificate, or causes another to execute the certificate on the person's behalf, and knew, and a general partner who knew or should have known, the statement to be false at the time the certificate was executed; and

(2) a general partner who thereafter knows or should have known that an arrangement or other fact described in the certificate has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate, or to file a petition for its cancellation or amendment under AS 32.11.050.

**Sec. 32.11.080. Scope of notice.** The fact that a certificate of limited partnership is on file with the department is notice that the partnership is a limited partnership and the persons designated in the certificate as general partners are general partners, but it is not notice of any other fact.

**Sec. 32.11.090. Delivery of certificates to limited partners.** Upon the return by the department under AS 32.11.060 of a certificate marked "Filed," the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate of amendment or cancellation to each limited partner unless the partnership agreement provides otherwise.

**Sec. 32.11.095. Conversion of certain entities to a limited partnership.** *[Repealed, Sec. 29 ch 60 SLA 2013.]*

## ARTICLE 2. LIMITED PARTNERS

### Section

**100. Admission of limited partners**

**110. Voting**

**120. Liability to third parties**

**130. Erroneous belief in status as a limited partner**

**140. Information**

**Sec. 32.11.100. Admission of limited partners.** (a) A person becomes a limited partner

- (1) at the time the limited partnership is formed; or
- (2) at a later time specified in the records of the limited partnership for becoming a limited partner.

(b) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner

(1) in the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or, if the partnership agreement does not provide, upon the written consent of all partners; and

(2) in the case of an assignee of a partnership interest of a partner who has the power under AS 32.11.350 to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with conditions limiting the grant or exercise of the power.

**Sec. 32.11.110. Voting.** Subject to AS 32.11.120, the partnership agreement may grant to all or a specified group of the limited partners the right to vote on a per capita or other basis on any matter.

**Sec. 32.11.120. Liability to third parties.** (a) Except as provided in (d) of this section, a limited partner is not liable for the obligations of a limited partnership unless the limited partner is also a general partner or, in addition to the exercise of the limited partner's rights and powers as a limited partner, the limited partner participates in the

control of the business. However, if the limited partner participates in the control of the business, the limited partner is liable only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

(b) A limited partner does not participate in the control of the business within the meaning of (a) of this section solely by doing one or more of the following:

- (1) being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director, or shareholder of a general partner that is a corporation;
- (2) consulting with and advising a general partner with respect to the business of the limited partnership;
- (3) acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;
- (4) taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;
- (5) requesting or attending a meeting of partners;
- (6) proposing, approving, or disapproving, by voting or otherwise, one or more of the following matters:
  - (A) the dissolution and winding up of the limited partnership;
  - (B) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership;
  - (C) the incurrance of indebtedness by the limited partnership other than in the ordinary course of its business;
  - (D) a change in the nature of the business;
  - (E) the admission or removal of a general partner;
  - (F) the admission or removal of a limited partner;
  - (G) a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;
  - (H) an amendment to the partnership agreement or certificate of limited partnership; or
  - (I) matters related to the business of the limited partnership not otherwise enumerated in this paragraph that the partnership agreement states in writing may be subject to the approval or disapproval of limited partners;
- (7) winding up the limited partnership under AS 32.11.390; or
- (8) exercising a right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection.

(c) The enumeration in (b) of this section does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by the limited partner in the business of the limited partnership.

(d) A limited partner who knowingly permits the limited partner's name to be used in the name of the limited partnership, except under circumstances permitted by AS 32.11.810(a)(2), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

**Sec. 32.11.130. Erroneous belief in status as a limited partner.** (a) Except as provided in (b) of this section, a person who makes a contribution to a business enterprise and erroneously but in good faith believes that the person has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising the rights of a limited partner, if, on ascertaining the mistake, the person

- (1) causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or
- (2) withdraws from future equity participation in the enterprise by executing and filing in the office of the commissioner a certificate declaring withdrawal under this section.

(b) A person who makes a contribution of the kind described in (a) of this section is liable as a general partner to a third party who transacts business with the enterprise before (1) the person withdraws and an appropriate certificate is filed to show withdrawal, or (2) an appropriate certificate is filed to show that the person is not a general partner, but in either case under (1) or (2) only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

**Sec. 32.11.140. Information.** Each limited partner has the right to

- (1) inspect and copy the partnership records required to be maintained by AS 32.11.840; and
- (2) obtain from the general partners from time to time upon reasonable demand
  - (A) true and full information regarding the state of the business and financial condition of the limited partnership;
  - (B) promptly after it becomes available, a copy of the limited partnership's federal, state, and local income tax returns for each year; and
  - (C) other information regarding the affairs of the limited partnership as is just and reasonable.

**ARTICLE 3.**  
**GENERAL PARTNERS**

**Section**

**150. Admission of additional general partners**

**160. Events of withdrawal**

**170. General powers and liabilities**

**180. Contributions by general partner; person both limited and general partner**

**190. Voting**

**Sec. 32.11.150. Admission of additional general partners.** After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners, with the written consent of all partners.

**Sec. 32.11.160. Events of withdrawal.** Except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

- (1) the general partner withdraws from the limited partnership under AS 32.11.250;
- (2) the general partner ceases to be a member of the limited partnership under AS 32.11.330;
- (3) the general partner is removed as a general partner in accordance with the partnership agreement;
- (4) unless otherwise provided in writing in the partnership agreement, the general partner
  - (A) makes an assignment for the benefit of creditors;
  - (B) files a voluntary petition in bankruptcy;
  - (C) is adjudicated a bankrupt or insolvent;
  - (D) files a petition or answer seeking for the general partner reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under a statute, law, or regulation;
  - (E) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the general partner in a proceeding of the nature of those specified in (A) - (D) of this paragraph; or
  - (F) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or a substantial part of the general partner's properties;
- (5) unless otherwise provided in writing in the partnership agreement, 120 days after the commencement of a proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under a statute, law, or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without the general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or a substantial part of the general partner's properties, the appointment is not vacated or stayed or within 90 days after the expiration of a stay, the appointment is not vacated;
- (6) in the case of a general partner who is a natural person,
  - (A) the general partner's death; or
  - (B) the entry of an order by a court of competent jurisdiction adjudicating the general partner incompetent to manage the general partner's person or the general partner's estate;
- (7) in the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;
- (8) in the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;
- (9) in the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or
- (10) in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

**Sec. 32.11.170. General powers and liabilities.** (a) Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

(b) Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners. The rights of a creditor with respect to a general partner's interest in a limited partnership are subject to AS 32.11.340.

**Sec. 32.11.180. Contributions by general partner; person both limited and general partner.** A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and

in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of the person's participation in the partnership as a limited partner.

**Sec. 32.11.190. Voting.** The partnership agreement may grant to all or certain identified general partners the right to vote, on a per capita or any other basis, separately or with all or any class of the limited partners, on any matter.

#### **ARTICLE 4. CONTRIBUTIONS; ALLOCATION OF PROFITS, LOSSES, AND DISTRIBUTIONS**

**Section**

- 200. Form of contribution**
- 210. Liability for contribution**
- 220. Sharing of profits and losses**
- 230. Allocation of distributions**

**Sec. 32.11.200. Form of contribution.** The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

**Sec. 32.11.210. Liability for contribution.** (a) A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

(b) Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform an enforceable promise to contribute cash or property or to perform services even if the partner is unable to perform because of death, disability, or other reason. If a partner does not make the required contribution of property or services, the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the partnership records required to be kept under AS 32.11.840, of the stated contribution that has not been made.

(c) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit or otherwise acts in reliance on that obligation after the partner signs a writing that reflects the obligation, and before the amendment or cancellation to reflect the compromise, may enforce the original obligation.

**Sec. 32.11.220. Sharing of profits and losses.** The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not specify the allocation in writing, profits and losses shall be allocated on the basis of the value, as stated in the partnership records required to be kept under AS 32.11.840, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

**Sec. 32.11.230. Allocation of distributions.** Distributions of cash or other assets of a limited partnership shall be allocated among the partners and among classes of partners in the manner provided in writing in the partnership agreement. If the partnership agreement does not specify the allocation in writing, distributions shall be made on the basis of the value, as stated in the partnership records required to be kept under AS 32.11.840, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

#### **ARTICLE 5. DISTRIBUTIONS, WITHDRAWAL, AND RETURN OF CONTRIBUTION**

**Section**

- 240. Interim distributions**
- 250. Withdrawal of general partner**
- 260. Withdrawal of limited partner**
- 270. Distribution upon withdrawal**
- 280. Distribution in kind**

**290. Right to distribution**

**300. Limitations on distribution**

**310. Liability upon return of contribution**

**Sec. 32.11.240. Interim distributions.** Except as provided in AS 32.11.240 - 32.11.310, a partner is entitled to receive distributions from a limited partnership before the partner's withdrawal from the limited partnership and before the dissolution and winding up of the partnership to the extent and at the times or upon the happening of the events specified in the partnership agreement.

**Sec. 32.11.250. Withdrawal of general partner.** A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to the general partner.

**Sec. 32.11.260. Withdrawal of limited partner.** A limited partner may not withdraw from a limited partnership except at the time or upon the happening of events specified in the partnership agreement. Notwithstanding anything to the contrary under applicable law, unless the partnership agreement provides otherwise, a limited partner may not withdraw from a limited partnership before the dissolution and winding up of the limited partnership.

**Sec. 32.11.270. Distribution upon withdrawal.** Except as provided in AS 32.11.240 - 32.11.310, upon withdrawal a withdrawing partner is entitled to receive a distribution to which the withdrawing partner is entitled under the partnership agreement and, if not otherwise provided in the agreement, the withdrawing partner is entitled to receive, within a reasonable time after withdrawal, the fair value of the withdrawing partner's interest in the limited partnership as of the date of withdrawal based upon the withdrawing partner's right to share in distributions from the limited partnership.

**Sec. 32.11.280. Distribution in kind.** Except as provided in writing in the partnership agreement, a partner, regardless of the nature of the partner's contribution, does not have the right to demand and receive a distribution from a limited partnership in a form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of an asset in kind from a limited partnership to the extent that the percentage of the asset distributed to the partner exceeds a percentage of that asset that is equal to the percentage in which the partner shares in distributions from the limited partnership.

**Sec. 32.11.290. Right to distribution.** At the time a partner becomes entitled to receive a distribution, the partner has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

**Sec. 32.11.300. Limitations on distribution.** A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

**Sec. 32.11.310. Liability upon return of contribution.** (a) If a partner has received the return of a part of the partner's contribution without violation of the partnership agreement or this chapter, the partner is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(b) If a partner has received the return of a part of the partner's contribution in violation of the partnership agreement or this chapter, the partner is liable to the limited partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.

(c) A partner receives a return of the partner's contribution to the extent that a distribution to the partner reduces the partner's share of the fair value of the net assets of the limited partnership below the value, as set out in the partnership records required to be kept under AS 32.11.840, of the partner's contribution that has not been distributed to the partner.

**ARTICLE 6.**

**NATURE OF AND ASSIGNMENT OF PARTNERSHIP INTERESTS**

**Section**

**320. Nature of partnership interest**

- 330. Assignment of partnership interest**
- 340. Rights of creditor**
- 350. Right of assignee to become limited partner**
- 360. Power of estate of deceased or incompetent partner**

**Sec. 32.11.320. Nature of partnership interest.** The interest of a partner, whether or not transferable, is personal property.

**Sec. 32.11.330. Assignment of partnership interest.** Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise the rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all of the partner's partnership interest.

**Sec. 32.11.340. Rights of creditor.** (a) On application to a court of competent jurisdiction by a judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent charged, the judgment creditor has only the rights of an assignee of the partnership interest. This chapter does not deprive a partner of the benefit of an exemption law applicable to the partner's partnership interest.

(b) This section provides the exclusive remedy that a judgment creditor of a general or limited partner or of the general or limited partner's assignee may use to satisfy a judgment out of the judgment debtor's interest in the partnership. Other remedies, including foreclosure on the general or limited partner's partnership interest and a court order for directions, accounts, and inquiries that the debtor general or limited partner might have made, are not available to the judgment creditor attempting to satisfy the judgment out of the judgment debtor's interest in the limited partnership and may not be ordered by a court.

**Sec. 32.11.350. Right of assignee to become limited partner.** (a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that

- (1) the assignor gives the assignee that right in accordance with authority described in the partnership agreement; or
- (2) all other partners consent.

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this chapter. An assignee who becomes a limited partner also is liable for the obligations of the assignee's assignor to make and return contributions as provided in AS 32.11.200 - 32.11.310. However, the assignee is not obligated for liabilities unknown to the assignee at the time the assignee became a limited partner.

(c) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from the assignor's liability to the limited partnership under AS 32.11.070 and 32.11.210.

**Sec. 32.11.360. Power of estate of deceased or incompetent partner.** If a partner who is an individual dies or a court of competent jurisdiction adjudges the partner to be incompetent to manage the partner's person or the partner's property, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all of the partner's rights for the purpose of settling the partner's estate or administering the partner's property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

## **ARTICLE 7. DISSOLUTION**

### **Section**

- 370. Dissolution**
- 380. Judicial dissolution**
- 390. Winding up**
- 400. Distribution of assets**

**Sec. 32.11.370. Dissolution.** A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

- (1) at the time or upon the happening of events specified in writing in the partnership agreement;
- (2) written consent of all partners;
- (3) an event of withdrawal of a general partner if there is no other general partner, and a majority in interest of the remaining partners fail to agree in writing within 90 days after the withdrawal to continue the business of the limited partnership and to the appointment, effective as of the date of withdrawal, of one or more additional general partners; or
- (4) entry of a decree of judicial dissolution under AS 32.11.380.

**Sec. 32.11.380. Judicial dissolution.** On application by or for a partner, the superior court may decree dissolution of a limited partnership whenever it is impossible to carry on the business in conformity with the partnership agreement.

**Sec. 32.11.390. Winding up.** Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if there are no general partners, the limited partners, may wind up the limited partnership's affairs; but the superior court may wind up the limited partnership's affairs upon application of a partner, a partner's legal representative, or assignee.

**Sec. 32.11.400. Distribution of assets.** Upon the winding up of a limited partnership, the assets shall be distributed as follows:

- (1) to creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under AS 32.11.240 or 32.11.270;
- (2) except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under AS 32.11.240 or 32.11.270; and
- (3) except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests, in the proportions in which the partners share in distributions.

## ARTICLE 8. FOREIGN LIMITED PARTNERSHIPS

### Section

- 410. Law governing
- 420. Registration required
- 430. Issuance of registration
- 440. Name
- 450. Correction of statements in registration application
- 460. Cancellation of registration
- 470. Transaction of business without registration
- 480. Action by department

**Sec. 32.11.410. Law governing.** Subject to the Constitution of the State of Alaska,

- (1) the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners; and
- (2) a foreign limited partnership may not be denied registration by reason of a difference between those laws and the laws of this state.

**Sec. 32.11.420. Registration required.** Before transacting business in this state, a foreign limited partnership shall register with the department. In order to register, a foreign limited partnership shall submit to the department an original and an exact copy of an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting out

- (1) the name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state;
- (2) the state and date of its formation;
- (3) the name and address of an agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent must be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, this state;
- (4) a statement that the commissioner is appointed the agent of the foreign limited partnership for service of process if an agent has not been appointed under (3) of this section or, if appointed, the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence;

(5) the address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;

(6) the name and business address of each general partner; and

(7) the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is cancelled or withdrawn.

**Sec. 32.11.430. Issuance of registration.** (a) If the department finds that an application for registration conforms to law and all requisite fees have been paid, the department shall

(1) endorse on the application the word "Filed," and the month, day, and year of the filing;

(2) file in the department the original of the application; and

(3) issue a certificate of registration to transact business in this state.

(b) The certificate of registration, together with an exact copy of the application, shall be returned to the person who filed the application or the person's representative.

**Sec. 32.11.440. Name.** A foreign limited partnership may register with the department under any name, whether or not it is the name under which it is registered in its state of organization, that includes without abbreviation the words "limited partnership" and that could be registered by a domestic limited partnership.

**Sec. 32.11.450. Correction of statements in registration application.** If a statement in the application for registration of a foreign limited partnership was false when made or arrangements or other facts described have changed, making the application inaccurate, the foreign limited partnership shall promptly file with the department a certificate, signed and sworn to by a general partner, correcting the statement.

**Sec. 32.11.460. Cancellation of registration.** A foreign limited partnership may cancel its registration by filing with the department a certificate of cancellation signed and sworn to by a general partner. A cancellation does not terminate the authority of the commissioner to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transactions of business in this state.

**Sec. 32.11.470. Transaction of business without registration.** (a) A foreign limited partnership transacting business in this state may not maintain an action, suit, or proceeding in a court of this state until it has registered in this state.

(b) The failure of a foreign limited partnership to register in this state does not impair the validity of a contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending an action, suit, or proceeding in a court of this state.

(c) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in this state without registration.

(d) A foreign limited partnership, by transacting business in this state without registration, appoints the commissioner as its agent for service of process with respect to causes of action arising out of the transaction of business in this state.

**Sec. 32.11.480. Action by department.** The department may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of AS 32.11.410 - 32.11.480.

## ARTICLE 9. DERIVATIVE ACTIONS

### Section

**490. Derivative action authorized**

**500. Proper plaintiff**

**510. Pleading**

**520. Recoveries**

**Sec. 32.11.490. Derivative action authorized.** A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

**Sec. 32.11.500. Proper plaintiff.** In a derivative action, the plaintiff must be a partner at the time of bringing the action and

- (1) must have been a partner at the time of the transaction of which the plaintiff complains; or
- (2) the plaintiff's status as a partner must have devolved upon the plaintiff by operation of law or under the terms of the partnership agreement from a person who was a partner at the time of the transaction.

**Sec. 32.11.510. Pleading.** In a derivative action, the complaint must set out with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

**Sec. 32.11.520. Recoveries.** If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, and if the plaintiff is awarded attorney fees or costs, the court shall direct the plaintiff to remit to the limited partnership the portion of the recovery that remains after deduction of the attorney fees and costs awarded to the plaintiff.

## ARTICLE 10. GENERAL PROVISIONS

### Section

**800. Construction and application**

**810. Name**

**820. Reservation of name**

**830. Specified office and agent**

**835. Amendment of partnership agreement**

**840. Records to be kept**

**850. Nature of business**

**860. Business transactions of partner with partnership**

**870. Filing fees**

**890. Rules for conversions and other cases not covered by chapter**

**900. Definitions**

**990. Short title**

**Sec. 32.11.800. Construction and application.** This chapter shall be so applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it, except to the extent that certain provisions of this chapter have been revised and are not identical to the Uniform Limited Partnership Act.

**Sec. 32.11.810. Name.** (a) The name of a limited partnership as set out in its certificate of limited partnership

- (1) must contain without abbreviation the words "limited partnership";
- (2) may not contain the name of a limited partner unless
  - (A) it is also the name of a general partner or the corporate name of a corporate general partner; or
  - (B) the business of the limited partnership had been carried on under that name before the admission of that limited partner; and
- (3) must be distinguishable on the records of the department from the name of any other organized entity and from a reserved or registered name; in this paragraph, "organized entity" and "reserved or registered name" have the meanings given in AS 10.35.040.

(b) The department may adopt regulations under AS 44.62 (Administrative Procedure Act) to implement (a)(3) of this section.

**Sec. 32.11.820. Reservation of name.** (a) The exclusive right to the use of a name may be reserved by

- (1) a person intending to organize a limited partnership under this chapter and to adopt that name;
- (2) a domestic limited partnership or a foreign limited partnership registered in this state that, in either case, intends to adopt that name;
- (3) a foreign limited partnership intending to register in this state and adopt that name; or
- (4) a person intending to organize a foreign limited partnership and intending to have it register in this state and adopt that name.

(b) The reservation shall be made by filing with the department an application, executed by the applicant, to reserve a specified name. If the department finds that the name is available for use by a domestic or foreign limited partnership under AS 32.11.810, the department shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having reserved a name, the same applicant may not again reserve the same name until more than 60 days after the expiration of the last 120-day period for which that applicant reserved that name. The right to the exclusive use of a reserved name may be transferred to another person by filing with the department a

notice of the transfer executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

**Sec. 32.11.830. Specified office and agent.** (a) A limited partnership shall continuously maintain in this state

(1) an office, which may but need not be a place of its business in this state, at which shall be kept the records required by AS 32.11.840 to be maintained; and

(2) an agent for service of process on the limited partnership, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state.

(b) A limited partnership may change its registered office, registered agent, or both, by filing with the department a statement signed by a general partner stating

(1) the name of the limited partnership;

(2) the address of its registered office;

(3) the address of its new registered office if the registered office is being changed;

(4) the name of its registered agent;

(5) the name of its new registered agent if the registered agent is being changed; and

(6) a statement that the change has been approved by all of the general partners.

**Sec. 32.11.835. Amendment of partnership agreement.** Unless the partnership agreement provides otherwise, a partnership agreement may not be amended except with the unanimous consent of all partners.

**Sec. 32.11.840. Records to be kept.** (a) A limited partnership shall keep at the office referred to in AS 32.11.830(a)(1) the following:

(1) a current list of the full name and last known business address of each partner, separately identifying the general partners in alphabetical order and the limited partners in alphabetical order;

(2) a copy of the certificate of limited partnership and all certificates of amendment to it, together with executed copies of a power of attorney under which a certificate has been executed;

(3) copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(4) copies of a then effective written partnership agreement and of a financial statement of the limited partnership for the three most recent years;

(5) unless contained in a written partnership agreement, a writing setting out

(A) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and that each partner has agreed to contribute;

(B) the times at which or events on the happening of which additional contributions agreed to be made by each partner are to be made;

(C) the right of a partner to receive, or of a general partner to make, distributions to a partner that include a return of all or a part of the partner's contribution;

(D) events upon the happening of which the limited partnership is to be dissolved and its affairs wound up; and

(6) a copy of any statement of merger, interest exchange, conversion, or domestication filed under AS 10.55 (Alaska Entity Transactions Act).

(b) Records kept under this section are subject to inspection and copying at the reasonable request and at the expense of a partner during ordinary business hours.

**Sec. 32.11.850. Nature of business.** A limited partnership may carry on business that a partnership without limited partners may carry on.

**Sec. 32.11.860. Business transactions of partner with partnership.** Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations as a person who is not a partner.

**Sec. 32.11.870. Filing fees.** A domestic or foreign limited partnership that files a certificate of limited partnership, amendment, cancellation, or registration, or other application with the department, shall pay to the commissioner a filing fee established by the department by regulation. The filing fee must be uniform and fixed.

**Sec. 32.11.890. Rules for cases not covered by chapter.** In a case not provided for in this chapter, the provisions of AS 32.06 govern, except as provided by AS 10.55 (Alaska Entity Transactions Act).

**Sec. 32.11.900. Definitions.** In this chapter, unless the context otherwise requires,

- (1) "certificate of limited partnership" means the certificate referred to in AS 32.11.010 and the certificate as amended or restated;
- (2) "commissioner" means the commissioner of commerce, community, and economic development;
- (3) "contribution" means cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, that a partner contributes to a limited partnership as a partner;
- (4) "department" means the Department of Commerce, Community, and Economic Development;
- (5) "event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner under AS 32.11.160;
- (6) "foreign limited partnership" means a partnership formed under the laws of a state other than this state and having as partners one or more general partners and one or more limited partners;
- (7) "general partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner;
- (8) "limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement;
- (9) "limited partnership," except when used in the phrases "foreign limited partnership" and "foreign limited liability limited partnership," and "domestic limited partnership" mean a partnership formed by two or more persons under this chapter, or that becomes subject to this chapter, and having one or more general partners and one or more limited partners;
- (10) "partner" means a limited or general partner;
- (11) "partnership agreement" means a valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business;
- (12) "partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets;
- (13) "state" means a state, territory, or possession of the United States, District of Columbia, or Commonwealth of Puerto Rico.

**Sec. 32.11.990. Short title.** This chapter may be cited as the Alaska Revised Limited Partnership Act.

**TITLE 45.  
TRADE AND COMMERCE**

**Chapter**

**50. Competitive Practices, Regulation of Competition, Consumer Protection (§§ 45.50.010 – 45.50.205)**

**CHAPTER 50.  
COMPETITIVE PRACTICES, REGULATION OF  
COMPETITION, CONSUMER PROTECTION**

**Article**

**1. Trademarks (§§ 45.50.010 – 45.50.205)**

**ARTICLE 1.  
TRADEMARKS**

**Section**

- 10. Registrability**
- 20. Application for registration**
- 25. Procedure concerning application**
- 30. Form of application**
- 40. Filing fee**
- 50. Form and contents of certificate of registration**
- 60. Certificate of registration as evidence**
- 70. Duration and renewal**
- 80. Fee for renewal of registration**
- 90. Additional terms of renewal**
- 100. Notification of expiration of registration period**
- 120. Assignment**
- 125. Name change and other filings**
- 130. Commissioner to keep record of registration**
- 140. Cancellation**
- 150. Classification**
- 160. Fraudulent registration**
- 170. Infringement**
- 180. Remedies**
- 200. Definitions**
- 205. Short title**

**Sec. 45.50.010. Registrability.** (a) A mark may not be registered if it consists of or comprises

- (1) immoral, deceptive, or scandalous matter;
- (2) matter that may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;
- (3) the flag, coat of arms, or other insignia of the United States, this or another state, a municipality of this or another state, a foreign nation, or simulation of any of these;
- (4) the name, signature, or portrait identifying a living individual, except with the written consent of the individual;

(5) a mark that, (A) when used on or in connection with goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them; (B) when used on or in connection with the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them; (C) is primarily merely a surname; however, this paragraph does not prevent the registration of a mark used by the applicant that has become distinctive of the applicant's goods or services; the commissioner may accept as evidence that the mark has become distinctive, as used on or in connection with the applicant's goods or services, proof of continuous use of the mark as a mark by the applicant in this state for the five years immediately preceding the date on which the claim of distinctiveness is made;

(6) a mark that so resembles a mark registered in the state or in the United States Patent and Trademark Office, or a mark previously used by another and not abandoned, as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive; or

(7) a mark that so resembles the name of another organized entity, or a reserved or registered name, that the mark is likely to cause confusion or mistake or to deceive; the form of operation of the organized entity without the mark, or of the person without the mark who holds the right to the reserved or registered name, is not a factor in determining whether the mark resembles a name under this paragraph; in this paragraph, "organized entity" and "reserved or registered name" have the meanings given in AS 10.35.040.

(b) For purposes of this section,

(1) "descriptive" means a word or combination of words that describes one or more of the characteristics of the goods or services, such as, what the goods or services are, what the goods are made of, or what the goods or services are used for; however, an otherwise descriptive word or combination of words can, as a secondary meaning, become accepted as identifying the goods or services of the applicant, in which case it is no longer merely descriptive;

(2) "misdescriptive" means a word or combination of words that falsely describes the nature, function, or capacity of goods or services.

**Sec. 45.50.020. Application for registration.** Subject to limitations under AS 45.50.010 - 45.50.205, a person who uses a mark in the state may file with the commissioner, on a form furnished by the department and in a manner complying with AS 45.50.010 - 45.50.205, an application for registration of that mark setting out the following information:

(1) the name and business address of the registrant and, if the registrant is a

(A) corporation, the state of incorporation; or

(B) partnership, the state in which the partnership is organized and the names of the general partners;

(2) the goods or services on or in connection with which the mark is used, the manner in which the mark is used on or in connection with the goods or services, and the class of the goods or services;

(3) the date when the mark was first used anywhere and the date when it was first used in this state by the applicant or a predecessor in interest;

(4) a statement that the applicant is the owner of the mark, that the mark is in use, and that, to the knowledge of the individual signing the application, no other person has the right to use the mark either in the identical form or in a near resemblance to it as to be likely, when applied to the goods or services of another person, to cause confusion or mistake, or to deceive; and

(5) a statement as to whether the applicant, or a predecessor in interest, has filed an application to register the mark, or portions or a composite of the mark, with the United States Patent and Trademark Office, and, if so, information regarding that application, including the filing date and serial number, the status of that application, whether that application was refused registration or otherwise did not result in a registration, and, if so, the reasons that application did not result in a registration.

**Sec. 45.50.025. Procedure concerning application.** (a) Upon the filing of an application for registration of a mark and payment of the application fee, the commissioner shall examine the application for conformity with AS 45.50.010 - 45.50.205. The commissioner may request additional information, including a description of a design mark, suggest amendments to the application, or suggest that a new application be filed. The applicant may provide the additional information requested, authorize the commissioner to make amendments to the application, or withdraw the application and file a new one to respond to a potential objection or rejection.

(b) As a condition of registration, the commissioner may require the applicant to disclaim an unregistrable component of a mark, or an applicant may voluntarily disclaim a component of a mark originally sought to be registered. A disclaimer under this subsection does not prejudice or affect the rights of an applicant or registrant

(1) in the disclaimed matter that exist at the time of the disclaimer or that arise later; or

(2) to register the disclaimed matter in another application if the disclaimed matter is or becomes distinctive of the applicant's or registrant's goods or services.

(c) If an applicant is found not to be entitled to registration of a mark, the commissioner shall notify the applicant and inform the applicant of the reasons for the finding. The commissioner shall give the applicant a reasonable period of time in which to reply or amend the application. If a reply or amendment is delivered to the commissioner within the designated period, the commissioner shall reexamine the application. Before making a final decision, an application may be amended and reexamined as many times as the commissioner determines to be necessary. However, if the applicant fails to reply or amend the application within the period designated by the commissioner, the application is considered abandoned.

(d) When the commissioner makes a final decision on the application, the commissioner shall notify the applicant in writing of the decision and that the decision is final, setting out the reasons for the decision if the application is disapproved. The applicant may appeal the commissioner's final decision to the superior court. The court may enter judgment setting aside, modifying, remanding, or affirming the decision.

(e) If the commissioner receives more than one application for registration of the same or a confusingly similar mark for the same or related goods or services, the commissioner shall grant the registration to the applicant who first filed the original application if the application otherwise qualifies for registration. A rejected applicant may

bring an action in superior court for cancellation of the registration upon the grounds of prior or superior rights to the mark.

**Sec. 45.50.030. Form of application.** The application shall be signed by the applicant or by a member of the firm or an officer of the corporation, partnership, or association applying. The application shall be accompanied by three specimens showing the actual use of the mark on or in connection with the goods or services.

**Sec. 45.50.040. Filing fee.** The application for registration shall be accompanied by a filing fee of \$50 payable to the department.

**Sec. 45.50.050. Form and contents of certificate of registration.** Upon compliance by the applicant with the requirements of AS 45.50.010 - 45.50.205, the commissioner shall issue and deliver a certificate of registration to the applicant. The certificate of registration shall be issued under the signature of the commissioner and the seal of the state. The certificate must show

- (1) the name and business address of the registrant and, if that registrant is a
  - (A) corporation, the state of incorporation; or
  - (B) partnership, the state in which the partnership is organized and the names of the general partners;
- (2) the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this state;
- (3) the class of goods or services and a description of the goods or services on or in connection with which the mark is used;
- (4) a reproduction of the mark;
- (5) the registration date; and
- (6) the term of the registration.

**Sec. 45.50.060. Certificate of registration as evidence.** A certificate of registration issued by the commissioner under AS 45.50.010 - 45.50.205 or a copy of it certified by the commissioner is admissible in evidence as competent and sufficient proof of the registration of the mark in an action or judicial proceeding in the state.

**Sec. 45.50.070. Duration and renewal.** (a) Registration of a mark is effective for a term of five years from the date of registration. Upon application filed within six months before the expiration of the term in a manner complying with the requirements of the commissioner, the registration may be renewed for an additional term of five years.

(b) An application for renewal of a registration must include a signed statement that the mark has been used and is still in use. Three specimens showing actual use of the mark on or in connection with the goods or services shall be submitted with the renewal application.

**Sec. 45.50.080. Fee for renewal of registration.** A renewal fee of \$50 shall accompany the application for renewal of the registration.

**Sec. 45.50.090. Additional terms of renewal.** A registration of a mark may be renewed for successive periods of five years in the manner provided in AS 45.50.070 and 45.50.080.

**Sec. 45.50.100. Notification of expiration of registration period.** The commissioner shall notify each registrant of the necessity of renewal at least six months preceding the expiration date of the registration. Notification shall be by writing to the last known address of the registrant.

**Sec. 45.50.110. Registrations existing on July 1, 1961.** [Repealed, Sec. 65 ch 37 SLA 1986]. *Repealed or Renumbered*

**Sec. 45.50.120. Assignment.** (a) A mark and its registration are assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of and symbolized by the mark.

(b) An assignment shall be in writing and may be filed with the commissioner upon the payment of a fee of \$25 to the department. The commissioner shall file the assignment and shall issue in the name of the assignee a new certificate for the remainder of the term of the registration.

(c) An assignment of registration is void as against a subsequent purchaser for valuable consideration without notice, unless it is filed with the commissioner within three months after the date of the assignment or before the subsequent purchase.

**Sec. 45.50.125. Name change and other filings.** (a) The name of a registrant or applicant may be changed by filing the change of name with the commissioner on a form furnished by the department that has been signed by the registrant or applicant and paying a filing fee of \$25. The commissioner shall issue in the changed name of a registrant an amended certificate of registration.

(b) Other signed and verified instruments that relate to a registered mark or an application for registration of a mark may be filed at the discretion of the commissioner upon payment of a filing fee established by regulation of the department.

(c) A photocopy of an instrument shall be accepted by the commissioner for filing if it is certified by a party to the instrument or a successor of a party to be a true and correct copy of the original and if the commissioner would have accepted the original for filing under (a) or (b) of this section.

(d) Acknowledgment is prima facie evidence for the commissioner of the execution of an assignment, change of name, or other instrument related to a registered mark or to registration of a mark. When the instrument is filed by the commissioner, the filing is prima facie evidence of execution of the instrument for all other purposes.

**Sec. 45.50.130. Commissioner to keep record of registration.** The commissioner shall keep for public examination a record of all marks registered or renewed under AS 45.50.010 - 45.50.205 and a record of all instruments filed under AS 45.50.125.

**Sec. 45.50.140. Cancellation.** (a) The commissioner shall cancel in whole or in part

(1) a registration for which the commissioner receives a voluntary written request for cancellation from the registrant or the assignee of record;

(2) each registration that expires and is not renewed under AS 45.50.070 and 45.50.090;

(3) a registration found by a court to be

(A) abandoned;

(B) not owned by the registrant;

(C) granted improperly;

(D) obtained fraudulently;

(E) so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the United States Patent and Trademark Office, before the date of filing of the application for registration by the registrant under AS 45.50.010 - 45.50.205, and not abandoned; however, if the registrant proves that the registrant is the owner of a concurrent registration of the mark in the United States Patent and Trademark Office covering an area including this state, the registration may not be canceled; or

(F) the generic name for all or a portion of the goods or services for which the mark has been registered;

(4) when a court orders cancellation of a registration on any ground.

(b) For purposes of (a) of this section, registration of a mark is abandoned when use of the mark has been discontinued and the registrant has no intent to resume its use, or when the mark loses its significance as a mark due to action or failure to act by the registrant. The intent not to resume the use of a mark may be inferred from circumstances. No use of a mark by the registrant for at least a 24-month period constitutes prima facie evidence that its registration has been abandoned.

**Sec. 45.50.150. Classification.** The department shall by regulation establish a classification of goods and services for convenience of administration of AS 45.50.010 - 45.50.205. However, the classification does not limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include all goods upon which, or services with which, the mark is actually being used comprised in a single class, but in no event may a single application include goods or services upon which the mark is being used that fall within different classes of goods or services. To the extent practical, the classification of goods and services should conform to the classification adopted by the United States Patent and Trademark Office.

**Sec. 45.50.160. Fraudulent registration.** A person who, for the person or on behalf of another, procures the filing or registration of a mark under AS 45.50.010 - 45.50.205 by knowingly making a false or fraudulent representation or declaration, orally or in writing, or by another fraudulent means, is liable to pay all damages sustained in consequence of the filing or registration, which may be recovered by or on behalf of the party injured in any court.

**Sec. 45.50.170. Infringement.** A person is liable in a civil action by the registrant for the remedies provided in AS 45.50.180 if the person

(1) uses, without the consent of the registrant, a reproduction, counterfeit, copy, or colorable imitation of a mark registered under AS 45.50.010 - 45.50.205 in connection with the sale, distribution, offering for sale, or advertising of goods or services on or in connection with which the use is likely to cause confusion or mistake or to deceive as to the source of origin of the goods or services; or

(2) reproduces, counterfeits, copies, or colorably imitates the mark and applies the reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in conjunction with the sale or distribution in this state of the goods or services; except that under this paragraph the registrant may not recover profits or damages unless the acts are committed with the intent to cause confusion or mistake or to deceive.

**Sec. 45.50.180. Remedies.** (a) A registrant may enjoin the manufacture, use, display, or sale of a counterfeit or imitation of the registrant's mark.

(b) The court may grant an injunction to restrain the manufacture, use, display, or sale, and may require the defendant to pay to the registrant either the profits derived from or the damages suffered by reason of the wrongful manufacture, use, display, or sale, or both. The court may also order that the counterfeit or imitation in the possession or under the control of a defendant be delivered to an officer of the court, or to the complainant, to be destroyed. The court may also enter judgment for punitive damages in an amount not to exceed three times the profits and damages.

(c) [Repealed, Sec. 29 ch 132 SLA 1996].

(d) A registrant that owns a mark that is famous in the state is entitled to an injunction against another's dilution of the mark. If the user of the famous mark wilfully intended to trade on the registrant's reputation or to cause dilution of the mark, the registrant is also entitled to remedies set out in (b) of this section. In determining whether a mark is famous, a court may consider any factor, including the

- (1) degree of inherent or acquired distinctiveness of the mark in the state;
- (2) duration and extent of use of the mark in connection with the goods and services;
- (3) duration and extent of advertising and publicity of the mark in the state;
- (4) geographical extent of the trading area in which the mark is used;
- (5) channels of trade for the goods or services with which the mark is used;
- (6) degree of recognition in the state of the mark in the registrant's trading area and channel of trade, and in the user's trading area and channel of trade; and

- (7) nature and extent of use of the same or similar mark by other persons.

(e) For purposes of (d) of this section, "dilution" means the use of a word, symbol, or device, or a combination of one or more of these, in a manner that deprives or reduces the distinctiveness of a mark.

**Sec. 45.50.190. Common-law rights.** [Repealed, Sec. 29 ch 132 SLA 1996].

**Sec. 45.50.200. Definitions.** In AS 45.50.010 - 45.50.205,

(1) "applicant" means the person filing an application for registration of a mark, or a legal representative, successor, or assign of that person;

(2) "certification mark" means a mark used upon or in connection with the goods or services of one or more persons other than the registrant to certify national or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of the goods or services or that the work or labor on the goods or services was performed by members of a union or other organization;

(3) "collective mark" means a trademark or service mark used by the members of a cooperative, an association, or other collective group or organization and includes marks used to indicate membership in a union, an association, or other organization;

(4) "commissioner" means the commissioner of commerce, community, and economic development;

(5) "department" means the Department of Commerce, Community, and Economic Development;

(6) "mark" means a certification mark, a collective mark, a service mark, or a trademark;

(7) "registrant" means the person to whom the registration of a mark is issued, or a legal representative, successor, or assign of that person;

(8) "service mark" means a word, symbol, design, or a combination of one or more of these that identifies the services of a person;

(9) "trademark" means a word, symbol, or design, or a combination of one or more of these, used by a person to identify its goods and distinguish them from those of another;

(10) "use" or "used" means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in the mark; a mark is considered to be in use on goods when it is placed in any manner on the goods, on the goods' container, on tags or labels affixed to the goods, on displays associated with the goods, or, if the nature of the goods makes other types of placement impracticable, on documents associated with the goods or with the sale of the goods when they are sold or transported in commerce in this state; a mark is considered to be in use on services when it is displayed in the sale or advertising of services that are performed in this state;

(11) "verified" means that a document has been certified to be true as provided in AS 09.63.040.

**Sec. 45.50.205. Short title.** AS 45.50.010 - 45.50.205 may be cited as the Alaska Trademark Act.

**CHAPTER 16.  
CORPORATIONS, PARTNERSHIPS, AND OTHER  
BUSINESS ORGANIZATIONS.**

**Section**

- 10. Fee for reservation, registration, or renewal of a reserved or registered business name under AS 10.06, AS 10.15, AS 10.20, AS 10.25, AS 10.35, AS 10.40, AS 10.45, AS 10.50, AS 32.06, or AS 32.11**
- 20. (Repealed)**
- 30. Fees and charges for business corporations under AS 10.06**
- 40. Fees and charges for cooperative corporations under AS 10.15**
- 50. Fees and charges for nonprofit corporations under AS 10.20**
- 55. Fees and charges for limited liability partnership under AS 32.06**
- 60. Fees for electric and telephone cooperatives under AS 10.25**
- 65. Fees and charges for limited liability companies under AS 10.50**
- 70. Fees for religious corporations under AS 10.40**
- 75. Fees and charges for limited partnerships under AS 32.11**
- 80. Fees for copies**
- 90. Fee for accepting service of process**
- 100. Fee for filing any other instrument**
- 105. Fee for expedited filings and copies**
- 110. (Repealed)**
- 115. Fees and class codes for trademark filings under AS 45.50**
- 120. Determining distinguishable names**
- 130. Electronic signatures**
- 140. Fees and charges for filing under AS 10.55**

**3 AAC 16.010. FEE FOR RESERVATION, REGISTRATION, OR RENEWAL OF A RESERVED OR REGISTERED BUSINESS NAME UNDER AS 10.06, AS 10.15, AS 10.20, AS 10.25, AS 10.35, AS 10.40, AS 10.45, AS 10.50, AS 32.06, OR AS 32.11.** (a) The nonrefundable fee for the initial reservation or registration of a business name is \$25.

(b) The nonrefundable fee for renewal of a reserved or registered business name is \$25.

(c) If a business name reservation is renewed more than twice within a 12-month period, a statement of intent to start a business shall be provided with the renewal application.

<b>Authority:</b>	AS 10.06.140	AS 10.25.530	AS 10.45.240
	AS 10.06.145	AS 10.35.010	AS 10.50.850
	AS 10.06.953	AS 10.35.060	AS 10.50.900
	AS 10.15.580	AS 10.35.070	AS 32.06.970
	AS 10.20.905	AS 10.40.140	AS 32.11.870

**3 AAC 16.020. FEE FOR REGISTRATION OR RENEWAL OF REGISTRATION OF A BUSINESS NAME UNDER AS 10.35.** Repealed 7/3/95.

**3 AAC 16.030. FEES AND CHARGES FOR BUSINESS CORPORATIONS UNDER AS 10.06.** (a) The fee for a domestic corporation filing articles of incorporation under AS 10.06 or a foreign corporation filing an application for certificate of authority under AS 10.06 is \$150.

(b) The nonrefundable fee for filing articles of amendment, articles of merger or consolidation, an amendment of certificate of authority, or any other document filed under AS 10.06 is \$25.

(c) Repealed 7/7/89.

(d) Repealed 7/7/89.

(e) The fee for filing a change of office address for three or more corporations submitted at one time by a registered agent is \$40.

(f) Repealed 7/3/95.

(g) Repealed 7/3/95.

(h) The nonrefundable fee for filing

(1) a certificate of election to dissolve is \$10; and

(2) articles of dissolution is \$15.

(i) Repealed 11/2/80.

(j) Repealed 7/7/89.

<b>Authority:</b>	AS 10.06.828	AS 10.06.835	AS 10.06.848
	AS 10.06.830	AS 10.06.838	AS 10.06.953

- 3 AAC 16.040. FEES AND CHARGES FOR COOPERATIVE CORPORATIONS UNDER AS 10.15.** (a) The biennial license fee for a cooperative corporation is \$100.
- (b) The fee for filing articles of incorporation for a cooperative corporation is \$150.
- (c) The nonrefundable fee for filing articles of amendment, articles of merger or consolidation, an amendment of certificate of authority, or any other document filed under AS 10.15 is \$25.
- (d) The nonrefundable fee for filing
- (1) a certificate of election to dissolve is \$10;
  - (2) articles of dissolution is \$15; and
  - (3) evidence of dissolution of a foreign corporation is \$25.
- (e) Repealed 7/7/89.

**Authority:** AS 10.15.545 AS 10.15.555 AS 10.15.580

- 3 AAC 16.050. FEES AND CHARGES FOR NONPROFIT CORPORATIONS UNDER AS 10.20.** (a) Repealed 7/7/89.
- (b) The fee for a domestic nonprofit corporation filing articles of incorporation or a foreign nonprofit corporation filing an application for certificate of authority is \$50.
- (c) The nonrefundable fee for filing articles of amendment, articles of merger or consolidation, an amendment of certificate of authority, or any other document filed under AS 10.20 is \$25.
- (d) Repealed 7/7/89.
- (e) The nonrefundable fee for filing
- (1) a resolution to dissolve is \$10;
  - (2) articles of dissolution is \$15; and
  - (3) evidence of dissolution of a foreign corporation is \$25.
- (f) Repealed 7/7/89.
- (g) Repealed 7/3/95.
- (h) Repealed 7/3/95.
- (i) Repealed 11/2/80.
- (j) Repealed 7/7/89.

**Authority:** AS 10.20.635 AS 10.20.705

- 3 AAC 16.055. FEES AND CHARGES FOR LIMITED LIABILITY PARTNERSHIP UNDER AS 32.06.**
- (a) The fee for a domestic limited liability partnership or a foreign limited liability partnership filing a statement of qualification under AS 32.06 is \$150.
- (b) The nonrefundable fee for filing an amendment to a statement, a withdrawal or cancellation of a statement, or any other document filed under AS 32.06 is \$25.
- (c) The fee to file a biennial report for a domestic limited liability partnership doing business in this state is \$100. The fee to file a biennial report for a foreign limited liability partnership doing business in this state is \$200. A domestic or foreign limited liability partnership that is delinquent in filing its biennial report on or before the time prescribed under AS 32.06.913 shall pay a late charge of \$25 for each year or part of a year of delinquency.
- (d) A domestic or foreign limited liability partnership that fails to file a biennial report within the time prescribed under AS 32.06.913 is subject to an additional charge of 10 percent of the total amount of the filing fee, and the late charge as stated in (c) of this section.

**Authority:** AS 32.06.913 AS 32.06.970

- 3 AAC 16.060. FEES FOR ELECTRIC AND TELEPHONE COOPERATIVES UNDER AS 10.25.** (a) The fee for an electric or telephone cooperative filing articles of incorporation is \$150.
- (b) The nonrefundable fee for filing articles of amendment, articles of merger or consolidation, an amendment of certificate of authority, or any other document filed under AS 10.25 is \$25.
- (c) The nonrefundable fee for filing
- (1) a certificate of election to dissolve is \$10;
  - (2) articles of dissolution is \$15; and
  - (3) evidence of dissolution of a foreign corporation is \$25.

**Authority:** AS 10.25.530

- 3 AAC 16.065. FEES AND CHARGES FOR LIMITED LIABILITY COMPANIES UNDER AS 10.50.** (a) The fee for a domestic limited liability company filing articles of organization under AS 10.50 or a foreign limited liability company filing an application for registration as a foreign limited liability company under AS 10.50 is \$150.

(b) The nonrefundable fee for filing articles of amendment, articles of merger or consolidation, articles of dissolution, an amendment of registration, or any other document filed under AS 10.50 is \$25.

(c) The fee to file a biennial report for a domestic limited liability company is \$100; a foreign limited liability company doing business in this state is \$200. A domestic or foreign limited liability company that is delinquent in filing its biennial report on or before the time prescribed under AS 10.50.760 (b) shall pay a late charge of \$25 for each year or part of a year of delinquency.

(d) A domestic or foreign limited liability company that fails to file a biennial report within the time prescribed under AS 10.50.760 (b) is subject to an additional charge of 10 percent of the total amount of the filing fee, and the late charge as stated in (c) of this section.

**Authority:** AS 10.50.850 AS 10.50.900

**3 AAC 16.070. FEES FOR RELIGIOUS CORPORATIONS UNDER AS 10.40.** (a) The fee for filing articles of incorporation of a religious corporation is \$50.

(b) The nonrefundable fee for filing articles of amendment, articles of merger or consolidation, an amendment of certificate of authority, or any other document filed under AS 10.40 is \$25.

(c) The nonrefundable fee for filing

(1) a certificate of election to dissolve is \$10;

(2) articles of dissolution is \$15; and

(3) evidence of dissolution of a foreign corporation is \$25.

**Authority:** AS 10.40.140

**3 AAC 16.075. FEES AND CHARGES FOR LIMITED PARTNERSHIPS UNDER AS 32.11.** (a) The fee for a domestic limited partnership filing a certificate of limited partnership or a foreign limited partnership filing an application for registration as a foreign limited partnership under AS 32.11 is \$150.

(b) The nonrefundable fee for filing a certificate of amendment, an amended registration of foreign limited partnership, or any other document filed under AS 32.11 is \$25.

(c) The nonrefundable fee for filing a certificate of cancellation under AS 32.11 is \$25.

(d) Repealed 7/13/2003.

**Authority:** AS 32.11.870

**3 AAC 16.080. FEES FOR COPIES.** (a) The nonrefundable fee for an uncertified copy of a one-page document or a biennial report is \$1.

(b) The nonrefundable fee for an uncertified copy of a specified document that contains more than one page and that pertains to one corporation file is \$10.

(c) The fee for an uncertified copy of all the documents contained in one corporation file is \$30 for up to 50 pages and \$1 per page for each additional page above 50.

(d) The nonrefundable fee to obtain a certificate of corporate status is \$10.

(e) The nonrefundable fee to certify a document as a true and correct copy is \$5.

(f) The nonrefundable fee for an electronic copy, on compact disc-read only memory (CD-ROM), of the department's database of business entity filings is \$25.

**Authority:** AS 10.06.840 AS 10.25.530 AS 32.11.870  
AS 10.06.953 AS 10.50.850 AS 40.25.110  
AS 10.15.555 AS 10.55.603 AS 40.25.115  
AS 10.20.640 AS 32.06.970 AS 40.25.120

**3 AAC 16.090. FEE FOR ACCEPTING SERVICE OF PROCESS.** The nonrefundable fee for the commissioner of commerce, community, and economic development to act as an agent for service of process, notice, or demand under AS 10.06, AS 10.20, AS 10.25, AS 10.40, AS 10.45, AS 10.50, AS 10.55, AS 32.06, or AS 32.11 is \$25.

**Authority:** AS 10.06.175 AS 10.40.130 AS 10.55.603  
AS 10.06.953 AS 10.45.240 AS 32.06.970  
AS 10.20.530 AS 10.50.850 AS 32.11.870  
AS 10.25.530

**3 AAC 16.100. FEE FOR FILING ANY OTHER INSTRUMENT.** The nonrefundable fee for filing any instrument authorized or required to be filed under AS 10.06, AS 10.15, AS 10.20, AS 10.25, AS 10.40, AS 10.45, AS 10.50, AS 10.55, AS 32.06, or AS 32.11, that is not otherwise specified in this chapter, is \$25.

<b>Authority:</b>	AS 10.06.843	AS 10.25.530	AS 10.55.603
	AS 10.06.953	AS 10.40.140	AS 32.06.970
	AS 10.15.555	AS 10.45.240	AS 32.11.870
	AS 10.20.635	AS 10.50.850	

**3 AAC 16.105. FEE FOR EXPEDITED FILINGS AND COPIES.** (a) The additional fee for an expedited filing under AS 10.06, AS 10.15, AS 10.20, AS 10.25, AS 10.40, AS 10.45, AS 10.50, AS 10.55, AS 32.06, or AS 32.11 is \$150.

(b) The additional fee for providing expedited copies of documents under 3 AAC 16.080 is \$50.

(c) Repealed 7/13/2003.

(d) Expedited filings and expedited requests for copies made in accordance with this section will be given priority over those received in the regular course of business.

(e) The commissioner may offer expedited filings in accordance with AS 10, AS 32, and this section.

<b>Authority:</b>	AS 10.06.175	AS 10.06.953	AS 10.40.130
	AS 10.06.828	AS 10.15.545	AS 10.40.140
	AS 10.06.830	AS 10.15.555	AS 10.45.240
	AS 10.06.833	AS 10.15.580	AS 10.50.850
	AS 10.06.835	AS 10.20.530	AS 10.50.900
	AS 10.06.838	AS 10.20.635	AS 10.55.603
	AS 10.06.840	AS 10.20.640	AS 32.06.970
	AS 10.06.843	AS 10.20.905	AS 32.11.870
	AS 10.06.845	AS 10.25.530	

**3 AAC 16.110. REPROCESSING FEE.** Repealed 7/13/2003.

**3 AAC 16.115. FEES AND CLASS CODES FOR TRADEMARK FILINGS UNDER AS 45.50.** (a) The fee for filing signed and verified instruments relating to a registered mark or application for registration under AS 45.50.125 (b) is \$25.

(b) The classification of goods, services, certification marks, and collective membership marks under AS 45.50.150 is the international schedule of classes of goods and services adopted by the United States Patent and Trademark Office in 37 C.F.R. 6.1, as amended through November 1, 1996, adopted by reference in this section.

<b>Authority:</b>	AS 45.50.125	AS 45.50.205
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**3 AAC 16.120. DETERMINING DISTINGUISHABLE NAMES.** (a) For purposes of the reservation, registration, or use of a name under AS 10 or AS 32, a name is

(1) distinguishable on the records of the department from the name of any other organized entity and from a reserved or registered name if

(A) each name contains one or more different letters or numerals or has a different sequence of letters or numerals;

(B) one of the key words is different;

(C) the key words are the same, but they are in a different order;

(D) the key words are the same, but the spelling is creative, unusual, or artistic;

(E) the key words have a marked difference in meaning in their contexts and the words are not literally identical;

(F) the difference in key words is between how a number is expressed, as a numeral, Roman numeral, or word representing a numeral; or

(G) an "s" is added or deleted to make the word plural, singular, or possessive; and

(2) not distinguishable on the records of the department from the name of any other organized entity or from a reserved or registered name if the names differ only in one or more of the following ways:

(A) use of the words or abbreviations of the words "incorporated," "corporation," "company," "limited," "limited liability company," or "limited liability partnership," or use of the words "limited partnership," without abbreviation;

(B) differences in punctuation or special characters;

(C) differences in capitalization;

(D) differences in whether the letters or numbers immediately follow each other or are separated by a space if the sequence of letters or numbers is identical;

(E) the presence or absence of an article, preposition, or conjunction, or a symbol for that word, including "a," "an," "by," "for," "in," "plus," "the," "to," and "with."

(b) In this section, "key word" means a word other than an article, preposition, conjunction, or entity identifier. Entity identifiers include "incorporated," "inc.," "corporation," "corp.," "company," "co.," "limited partnership," "limited," "Ltd.," "limited liability company," "llc.," "limited liability partnership," and "llp."

<b>Authority:</b>	AS 10.06.105	AS 10.20.470	AS 10.50.035
	AS 10.06.115	AS 10.20.471	AS 10.50.040
	AS 10.06.125	AS 10.25.040	AS 10.50.408
	AS 10.06.130	AS 10.35.020	AS 32.06.911
	AS 10.06.633	AS 10.35.040	AS 32.06.922
	AS 10.06.720	AS 10.40.015	AS 32.11.120
	AS 10.13.120	AS 10.45.120	AS 32.11.810
	AS 10.15.578	AS 10.50.025	AS 32.11.820
	AS 10.20.021		

**3 AAC 16.130. ELECTRONIC SIGNATURES.** The commissioner may accept an electronic signature on an electronic record that is filed under AS 10, AS 32, or AS 45.50.

**Authority:** AS 09.80.020 AS 09.80.150

**3 AAC 16.140. FEES AND CHARGES FOR FILING UNDER AS 10.55.** The nonrefundable fee for filing a

- (1) statement of merger is \$25;
- (2) statement of abandonment of merger is \$25;
- (3) statement of interest exchange is \$25;
- (4) statement of abandonment of interest exchange is \$25;
- (5) statement of conversion is \$25;
- (6) statement of abandonment of conversion is \$25;
- (7) statement of domestication is \$25;
- (8) statement of abandonment of domestication is \$25.

**Authority:** AS 10.55.603