

**Part 10**  
**Amendment of Articles of Incorporation and Bylaws**

**16-10a-1001 Authority to amend.**

- (1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.
- (2) A shareholder does not have a vested property right resulting from any provision in the articles of incorporation, including any provision relating to management, control, capital structure, purpose, duration of the corporation, or dividend entitlement.

Enacted by Chapter 277, 1992 General Session

**16-10a-1002 Amendment by board of directors.**

- (1) Unless otherwise provided in the articles of incorporation, a corporation's board of directors may adopt, without shareholder action, one or more amendments to the corporation's articles of incorporation to:
  - (a) delete the names and addresses of incorporators or initial directors or both from the articles of incorporation;
  - (b) change the information required by Subsection 16-17-203(1), but an amendment is not required to change the information;
  - (c) change each issued and unissued authorized share of a class into a greater number of whole shares if the corporation has only shares of that class outstanding;
  - (d) change the corporate name by adding the word "corporation," "incorporated," or "company," or an abbreviation of these words, or by substituting any such word or abbreviation for a similar word or abbreviation in the name; or
  - (e) make any other change expressly permitted by this chapter to be made without shareholder action.
- (2) The board of directors may adopt, without shareholder action, one or more amendments to the articles of incorporation to change the corporate name, if necessary, in connection with the reinstatement of a corporation pursuant to Section 16-10a-1422.

Amended by Chapter 364, 2008 General Session

**16-10a-1003 Amendment by board of directors and shareholders.**

- (1) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.
- (2) For an amendment to the articles of incorporation proposed pursuant to Subsection (1) to be adopted:
  - (a) the board of directors shall recommend the amendment to the shareholders unless the board determines that, because of conflicts of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and
  - (b) shareholders entitled to vote on the amendment shall approve the amendment as provided in Subsection (5).
- (3) The board of directors may condition its submission of the proposed amendment on any basis.

- (4) The corporation shall give notice, in accordance with Section 16-10a-705, of the shareholders' meeting at which the amendment will be voted upon, to each shareholder entitled to vote on the proposed amendment. The notice of the meeting shall state that one of the purposes of the meeting is to consider the proposed amendment and it shall contain or be accompanied by a copy or summary of the amendment.
- (5) Unless this chapter, the articles of incorporation, the bylaws, if authorized by the articles of incorporation, or the board of directors acting pursuant to Subsection (3) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:
  - (a) a majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights;
  - (b) a majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would materially and adversely affect rights in respect of the shares of the voting group because it:
    - (i) alters or abolishes a preferential right of the shares;
    - (ii) creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares;
    - (iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;
    - (iv) excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or
    - (v) reduces the number of shares owned by the shareholder to a fraction of a share or scrip if the fractional share or scrip so created is to be acquired for cash or the scrip is to be voided under Section 16-10a-604; and
  - (c) the votes required by Sections 16-10a-725 and 16-10a-726 by every other voting group entitled to vote on the amendment.
- (6) If any amendment to the articles of incorporation would impose personal liability on shareholders for the debts of a corporation, it must be approved by all of the outstanding shares affected, regardless of limitations or restrictions on the voting rights of the shares.

Amended by Chapter 378, 2010 General Session

**16-10a-1004 Voting on amendments by voting groups.**

- (1) Except as otherwise provided in Subsection (5), the holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this chapter, on a proposed amendment if the amendment would:
  - (a) increase or decrease the aggregate number of authorized shares of the class;
  - (b) effect an exchange or reclassification of all or part of the shares of the class into shares of another class;
  - (c) effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;
  - (d) change the designation, rights, preferences, or limitations of all or part of the shares of the class;
  - (e) change the shares of all or part of the class into a different number of shares of the same class;
  - (f) create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

- (g) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;
  - (h) limit or deny an existing preemptive right of all or part of the shares of the class; or
  - (i) cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.
- (2) Except as otherwise provided in Subsection (3), if a proposed amendment would affect a series of a class of shares in one or more of the ways described in Subsection (1), the shares of that series are entitled to vote as a separate voting group on the proposed amendment.
  - (3) If a proposed amendment that entitles two or more series of a class of shares to vote as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shares of all the series so affected shall instead vote together as a single voting group on the proposed amendment.
  - (4) Except as otherwise provided in Subsection (5), a class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.
  - (5) Notwithstanding the rights granted by this section to holders of the outstanding shares of a class or series to vote as a separate voting group, the rights may be otherwise restricted if so provided in the original articles of incorporation, in any amendment thereto which created the class or series or which was adopted prior to the issuance of any shares of the class or series, or in any amendment thereto which was authorized by a resolution or resolutions adopted by the affirmative vote of the holders of a majority of the class or series.

Enacted by Chapter 277, 1992 General Session

**16-10a-1005 Amendment before issuance of shares.**

If a corporation has not yet issued shares, its board of directors or, if no board of directors has been appointed, its incorporators, may adopt any amendments to the corporation's articles of incorporation.

Enacted by Chapter 277, 1992 General Session

**16-10a-1006 Articles of amendment.**

A corporation amending its articles of incorporation shall deliver to the division for filing articles of amendment setting forth:

- (1) the name of the corporation;
- (2) the text of each amendment adopted;
- (3) if an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;
- (4) the date of each amendment's adoption;
- (5) if an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required; and
- (6) if an amendment was approved by the shareholders:
  - (a) the designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting; and
  - (b) either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for

the amendment by each voting group and a statement that the number of votes cast for the amendment by each voting group entitled to vote separately on the amendment was sufficient for approval by that voting group.

Enacted by Chapter 277, 1992 General Session

**16-10a-1007 Restated articles of incorporation.**

- (1) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action. A corporation's incorporators may restate its articles of incorporation at any time if the corporation has not issued shares and if no directors have been appointed.
- (2) The restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment requiring shareholder approval, it must be adopted as provided in Section 16-10a-1003.
- (3) If the board of directors submits a restatement for shareholder action, the corporation shall give notice, in accordance with Section 16-10a-705, to each shareholder entitled to vote on the restatement, of the proposed shareholders' meeting at which the restatement will be voted upon. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and the notice shall contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles of incorporation.
- (4) A corporation restating its articles of incorporation shall deliver to the division for filing articles of restatement setting forth:
  - (a) the name of the corporation;
  - (b) the text of the restated articles of incorporation;
  - (c) if the restatement contains an amendment to the articles of incorporation, the information required to be set forth in articles of amendment by Section 16-10a-1006;
  - (d) if the restatement does not contain an amendment to the articles of incorporation, a statement to that effect; and
  - (e) if the restatement was adopted by the board of directors or incorporators without shareholder action, a statement as to how the restatement was adopted and that shareholder action was not required.
- (5) Upon filing by the division or at any later effective date determined pursuant to Section 16-10a-123, restated articles of incorporation supersede the original articles of incorporation and all prior amendments to them.

Amended by Chapter 378, 2010 General Session

**16-10a-1008 Amendment pursuant to reorganization.**

- (1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan or reorganization ordered or decreed by a court of competent jurisdiction under a statute of the United States if the articles of incorporation after amendment contain only provisions required or permitted by Section 16-10a-202.
- (2) For an amendment to the articles of incorporation to be made pursuant to Subsection (1), the individual or individuals designated by the court shall deliver to the division for filing articles of amendment setting forth:
  - (a) the name of the corporation;
  - (b) the text of each amendment approved by the court;

- (c) the date of the court's order or decree approving the articles of amendment;
  - (d) the title of the reorganization proceeding in which the order or decree was entered; and
  - (e) a statement that the court had jurisdiction of the proceeding under a specified statute of the United States.
- (3) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except as and to the extent provided in the reorganization plan.
- (4) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Enacted by Chapter 277, 1992 General Session

**16-10a-1008.5 Conversion to a nonprofit corporation.**

- (1)
- (a) A corporation may convert to a nonprofit corporation subject to Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, by filing an amendment of its articles of incorporation pursuant to this section.
  - (b) The day on which a corporation files an amendment under this section, the corporation becomes a nonprofit corporation subject to Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, except that, notwithstanding Section 16-6a-203, the existence of the nonprofit corporation is considered to commence on the day on which the converting corporation:
    - (i) commenced its existence under this chapter; or
    - (ii) otherwise was created, formed, incorporated, or came into being.
- (2) The amendment of the articles of incorporation to convert to a nonprofit corporation shall:
- (a) revise the statement of purposes of the corporation;
  - (b) delete:
    - (i) the authorization for shares; and
    - (ii) any provision relating to authorized or issued shares;
  - (c) if any shares have been issued, provide for:
    - (i) the cancellation of issued shares; or
    - (ii) the conversion of the shares to membership interests in the nonprofit corporation; and
  - (d) make such other changes as may be necessary or desired.
- (3) If the corporation has issued shares, an amendment to convert to a nonprofit corporation shall be approved by all of the outstanding shares of all classes of shares regardless of limitations or restrictions on the voting rights of the shares.
- (4) If an amendment pursuant to this section is included in a merger agreement, this section applies, except that any provision for the cancellation or conversion of shares shall be set forth in the merger agreement and not in the amendment of the articles of incorporation.
- (5) The conversion of a corporation into a nonprofit corporation does not affect:
- (a) an obligation or liability of the converting corporation incurred before its conversion to a nonprofit corporation; or
  - (b) the personal liability of any person incurred before the conversion.
- (6)
- (a)
    - (i) When a conversion is effective under this section, for purposes of the laws of this state, the things listed in Subsection (6)(a)(ii):
      - (A) vest in the nonprofit corporation to which the corporation converts;

- (B) are the property of the nonprofit corporation; and
- (C) are not considered transferred by the converting corporation to the nonprofit corporation by operation of this Subsection (6)(a).
- (ii) This Subsection (6)(a) applies to the following of the converting corporation:
  - (A) its rights, privileges, and powers;
  - (B) its interests in property, whether real, personal, or mixed;
  - (C) debts due to the converting corporation;
  - (D) debts, liabilities, and duties of the converting corporation;
  - (E) rights and obligations under contract of the converting corporation; and
  - (F) other things and causes of action belonging to the converting corporation.
- (b) The title to any real property vested by deed or otherwise in a corporation converting to a nonprofit corporation does not revert and is not in any way impaired by reason of this chapter or of the conversion.
- (c) A right of a creditor or a lien on property of a converting corporation that is described in Subsection (6)(a) or (b) is preserved unimpaired.
- (d) A debt, liability, or duty of a converting corporation:
  - (i) remains attached to the nonprofit corporation to which the corporation converts; and
  - (ii) may be enforced against the nonprofit corporation to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the nonprofit corporation in its capacity as a nonprofit corporation.
- (e) A converted corporation upon conversion to a nonprofit corporation pursuant to this section is considered the same entity as the nonprofit corporation.
- (f) In connection with a conversion of a corporation to a nonprofit corporation under this section, the interests or rights in the corporation which is to be converted may be exchanged or converted into one or more of the following:
  - (i) cash, property, interests, or rights in the nonprofit corporation to which it is converted; or
  - (ii) cash, property or interests in, or rights in another entity.
- (g) Unless otherwise agreed:
  - (i) a converting corporation is not required solely as a result of the conversion to:
    - (A) wind up its affairs;
    - (B) pay its liabilities; or
    - (C) distribute its assets; and
  - (ii) a conversion is not considered to constitute a dissolution of the corporation, but constitutes a continuation of the existence of the corporation in the form of a nonprofit corporation.

Amended by Chapter 386, 2009 General Session

**16-10a-1008.7 Conversion to or from a domestic limited liability company.**

- (1)
  - (a) A corporation may convert to a domestic limited liability company subject to Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405 by complying with:
    - (i) this Subsection (1); and
    - (ii) Section 48-2c-1401 or 48-3a-1041.
  - (b) If a corporation converts to a domestic limited liability company in accordance with this Subsection (1), the articles of conversion shall:
    - (i) comply with Section 48-2c-1402 or Sections 48-3a-1045 and 48-3a-1046; and

- (ii) if the corporation has issued shares, provide for:
  - (A) the cancellation of any issued share; or
  - (B) the conversion of any issued share to a membership interest in the domestic limited liability company.
- (c) Before articles of conversion, in accordance with Section 48-2c-1404, or a statement of conversion, in accordance with Section 48-3a-1045, may be filed with the division, the conversion shall be approved:
  - (i) in the manner provided for the articles of incorporation or bylaws of the corporation; or
  - (ii) if the articles of incorporation or bylaws of the corporation do not provide the method for approval:
    - (A) if the corporation has issued shares, by all of the outstanding shares of all classes of shares of the corporation regardless of limitations or restrictions on the voting rights of the shares; or
    - (B) if the corporation has not issued shares, by a majority of:
      - (I) the directors in office at the time that the conversion is approved by the board of directors; or
      - (II) if directors have not been appointed or elected, the incorporators.
- (2) A domestic limited liability company may convert to a corporation subject to this chapter by:
  - (a) filing articles of incorporation in accordance with this chapter; and
  - (b) complying with Section 48-2c-1406 or 48-3a-1041, as appropriate pursuant to Section 48-3a-1405.

Amended by Chapter 412, 2013 General Session

**16-10a-1009 Effect of amendment.**

An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

Enacted by Chapter 277, 1992 General Session

**16-10a-1020 Amendment of bylaws by board of directors or shareholders.**

- (1) A corporation's board of directors may amend the corporation's bylaws at any time, except to the extent that the articles of incorporation, the bylaws, or this chapter reserve this power exclusively to the shareholders, in whole or part.
- (2) A corporation's shareholders may amend the corporation's bylaws at any time, even though the bylaws may also be amended at any time by the board of directors.

Enacted by Chapter 277, 1992 General Session

**16-10a-1021 Bylaw changing quorum or voting requirement for shareholders.**

- (1) If authorized by the articles of incorporation or this chapter, the shareholders may adopt, amend, or repeal a bylaw that fixes a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is required by this chapter. Such action is subject to the provisions of Part 7, Shareholders.
- (2) A bylaw that fixes a greater quorum or voting requirement for shareholders under Subsection (1) may not be adopted, amended, or repealed by the board of directors.

Amended by Chapter 85, 2007 General Session

**16-10a-1022 Bylaw changing quorum or voting requirement for directors.**

- (1) A bylaw that fixes a greater quorum or voting requirement for the board of directors than is required by this chapter may be amended or repealed:
  - (a) if originally adopted by the shareholders, only by the shareholders, unless otherwise permitted as contemplated by Subsection (2); or
  - (b) if originally adopted by the board of directors, by the shareholders or unless otherwise provided in the articles of incorporation or bylaws, by the board of directors.
- (2) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.
- (3) Action by the board of directors under Subsection (1)(b) to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

Amended by Chapter 378, 2010 General Session

**16-10a-1023 Bylaw provisions relating to election of directors.**

- (1) A corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association may elect in its bylaws to be governed in the election of directors by Subsection (2) unless the articles of incorporation:
  - (a) specifically prohibit the adoption of a bylaw electing to be governed by this section;
  - (b) alter the vote required by Subsection 16-10a-728(2); or
  - (c) provide for cumulative voting.
- (2) A corporation may elect to be governed in the election of directors as follows:
  - (a) Each vote entitled to be cast may be voted for or against up to that number of candidates that is equal to the number of directors to be elected, or the shareholder may indicate abstention, but without cumulating the votes.
  - (b) To be elected, a nominee shall receive a plurality of the votes cast by shareholders of shares entitled to vote in the election at a meeting at which a quorum is present.
  - (c) Notwithstanding Subsection (2)(b), a nominee who is elected but receives more votes against than for election shall serve as a director for a term that terminates on the earlier of:
    - (i) 90 days after the day on which the corporation certifies the voting results; or
    - (ii) the day on which a person is selected by the board of directors to fill the office held by the director, which selection constitutes the filling of a vacancy by the board for the purpose of Section 16-10a-810.
  - (d) Subject to Subsection (2)(e), a nominee who is elected but receives more votes against than for election may not serve as a director beyond the 90-day period allowed by Subsection (2)(c).
  - (e) The board of directors may select any qualified person to fill the office held by a director who receives more votes against than for election.
- (3)

- (a) Subsection (2) does not apply to an election of a director by a voting group if there are more candidates for election by the voting group than the number of directors to be elected, one or more of whom are properly proposed by shareholders.
- (b) The determination of the number of candidates under Subsection (3)(a) is made:
  - (i) at the expiration of a time fixed by the articles of incorporation or bylaws for the advance notification of director candidates; or
  - (ii) if there is no provision under Subsection (3)(b)(i), at a time fixed by the board of directors not more than 14 days before notice is given of the meeting at which the election is to occur.
- (4) A person may not be considered a candidate for the purpose of Subsection (3) if the board of directors determines before the notice of meeting is given that the person's candidacy does not create a bona fide election contest.
- (5) A bylaw electing to be governed by this section may be repealed:
  - (a) by the shareholders if originally adopted by the shareholders, unless otherwise provided by the bylaws; or
  - (b) by the board of directors or the shareholders, if originally adopted by the board of directors.

Amended by Chapter 378, 2010 General Session