

## Part 16

### Records, Information, and Reports

#### **16-6a-1601 Corporate records.**

- (1) A nonprofit corporation shall keep as permanent records:
  - (a) minutes of all meetings of its members and board of directors;
  - (b) a record of all actions taken by the members or board of directors without a meeting;
  - (c) a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the nonprofit corporation; and
  - (d) a record of all waivers of notices of meetings of members and of the board of directors or any committee of the board of directors.
- (2) A nonprofit corporation shall maintain appropriate accounting records.
- (3) A nonprofit corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the name and address of all members:
  - (a) in alphabetical order, by class; and
  - (b) showing the number of votes each member is entitled to vote.
- (4) A nonprofit corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.
- (5) A nonprofit corporation shall keep a copy of each of the following records at its principal office:
  - (a) its articles of incorporation;
  - (b) its bylaws;
  - (c) resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;
  - (d) the minutes of all members' meetings for a period of three years;
  - (e) records of all action taken by members without a meeting, for a period of three years;
  - (f) all written communications to members generally as members for a period of three years;
  - (g) a list of the names and business or home addresses of its current directors and officers;
  - (h) a copy of its most recent annual report delivered to the division under Section 16-6a-1607; and
  - (i) all financial statements prepared for periods ending during the last three years that a member could have requested under Section 16-6a-1606.

Enacted by Chapter 300, 2000 General Session

#### **16-6a-1602 Inspection of records by directors and members.**

- (1) A director or member is entitled to inspect and copy any of the records of the nonprofit corporation described in Subsection 16-6a-1601(5):
  - (a) during regular business hours;
  - (b) at the nonprofit corporation's principal office; and
  - (c) if the director or member gives the nonprofit corporation written demand, at least five business days before the date on which the member wishes to inspect and copy the records.
- (2) In addition to the rights set forth in Subsection (1), a director or member is entitled to inspect and copy any of the other records of the nonprofit corporation:
  - (a) during regular business hours;
  - (b) at a reasonable location specified by the nonprofit corporation; and
  - (c) at least five business days before the date on which the member wishes to inspect and copy the records, if the director or member:

- (i) meets the requirements of Subsection (3); and
  - (ii) gives the nonprofit corporation written demand.
- (3) A director or member may inspect and copy the records described in Subsection (2) only if:
- (a) the demand is made:
    - (i) in good faith; and
    - (ii) for a proper purpose;
  - (b) the director or member describes with reasonable particularity the purpose and the records the director or member desires to inspect; and
  - (c) the records are directly connected with the described purpose.
- (4) Notwithstanding Section 16-6a-102, for purposes of this section:
- (a) "member" includes:
    - (i) a beneficial owner whose membership interest is held in a voting trust; and
    - (ii) any other beneficial owner of a membership interest who establishes beneficial ownership; and
  - (b) "proper purpose" means a purpose reasonably related to the demanding member's or director's interest as a member or director.
- (5) The right of inspection granted by this section may not be abolished or limited by the articles of incorporation or bylaws.
- (6) This section does not affect:
- (a) the right of a director or member to inspect records under Section 16-6a-710;
  - (b) the right of a member to inspect records to the same extent as any other litigant if the member is in litigation with the nonprofit corporation; or
  - (c) the power of a court, independent of this chapter, to compel the production of corporate records for examination.
- (7) A director or member may not use any information obtained through the inspection or copying of records permitted by Subsection (2) for any purposes other than those set forth in a demand made under Subsection (3).

Enacted by Chapter 300, 2000 General Session

**16-6a-1603 Scope of inspection right.**

- (1) A director's or member's agent or attorney has the same inspection and copying rights as the director or member.
- (2) The right to copy records under Section 16-6a-1602 includes, if reasonable, the right to receive copies made by photographic, xerographic, electronic, or other means.
- (3) Except as provided in Section 16-6a-1606, the nonprofit corporation may impose a reasonable charge covering the costs of labor and material for copies of any documents provided to the director or member. The charge may not exceed the estimated cost of production and reproduction of the records.
- (4) The nonprofit corporation may comply with a director's or member's demand to inspect the record of members under Subsection 16-6a-1601(3) by furnishing to the director or member a list of directors or members that:
  - (a) complies with Subsection 16-6a-1601(3); and
  - (b) is compiled no earlier than the date of the director's or member's demand.

Amended by Chapter 218, 2010 General Session

**16-6a-1604 Court-ordered inspection of corporate records.**

- (1)
  - (a) A director or member may petition the applicable court if:
    - (i) a nonprofit corporation refuses to allow a director or member, or the director's or member's agent or attorney, to inspect or copy any records that the director or member is entitled to inspect or copy under Subsection 16-6a-1602(1); and
    - (ii) the director or member complies with Subsection 16-6a-1602(1).
  - (b) If petitioned under Subsection (1)(a), the court may summarily order the inspection or copying of the records demanded at the nonprofit corporation's expense on an expedited basis.
- (2)
  - (a) A director or member may petition the applicable court if:
    - (i) a nonprofit corporation refuses to allow a director or member, or the director's or member's agent or attorney, to inspect or copy any records that the director or member is entitled to inspect or copy pursuant to Subsections 16-6a-1602(2) and (3) within a reasonable time following the director's or member's demand; and
    - (ii) the director or member complies with Subsections 16-6a-1602(2) and (3).
  - (b) If the court is petitioned under Subsection (2)(a), the court may summarily order the inspection or copying of the records demanded.
- (3) If a court orders inspection or copying of the records demanded under Subsection (1) or (2), unless the nonprofit corporation proves that it refused inspection or copying in good faith because it had a reasonable basis for doubt about the right of the director or member, or the director's or member's agent or attorney, to inspect or copy the records demanded:
  - (a) the court shall also order the nonprofit corporation to pay the director's or member's costs, including reasonable counsel fees, incurred to obtain the order;
  - (b) the court may order the nonprofit corporation to pay the director or member for any damages the member incurred;
  - (c) if inspection or copying is ordered pursuant to Subsection (2), the court may order the nonprofit corporation to pay the director's or member's inspection and copying expenses; and
  - (d) the court may grant the director or member any other remedy provided by law.
- (4) If a court orders inspection or copying of records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding director or member.
- (5) For purposes of this section, the applicable court is:
  - (a) the district court of the county in this state where the nonprofit corporation's principal office is located; or
  - (b) if the nonprofit corporation has no principal office in this state, the district court in and for Salt Lake County.

Amended by Chapter 364, 2008 General Session

**16-6a-1605 Limitations on use of membership list.**

- (1) Without consent of the board of directors, a membership list or any part of a membership list may not be obtained or used by any person for any purpose unrelated to a member's interest as a member.
- (2) Without limiting the generality of Subsection (1), without the consent of the board of directors, a membership list or any part of a membership list may not be:
  - (a) used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the nonprofit corporation;
  - (b) used for any commercial purpose; or
  - (c) sold to or purchased by any person.

Enacted by Chapter 300, 2000 General Session

**16-6a-1606 Financial statements.**

By no later than 15 days after the day on which the nonprofit corporation receives a written request of any member, a nonprofit corporation shall mail to the member the following that show in reasonable detail the assets and liabilities and results of the operations of the nonprofit corporation:

- (1) the nonprofit corporation's most recent annual financial statements, if any; and
- (2) the nonprofit corporation's most recently published financial statements, if any.

Amended by Chapter 197, 2002 General Session

**16-6a-1607 Annual report for division.**

- (1) Each domestic nonprofit corporation, and each foreign nonprofit corporation authorized to conduct affairs in this state, shall deliver to the division for filing an annual report on a form provided by the division that sets forth:
  - (a)
    - (i) the corporate name of the domestic or foreign nonprofit corporation; and
    - (ii) any assumed corporate name of the foreign nonprofit corporation;
  - (b) the jurisdiction under whose law it is incorporated;
  - (c) the information required by Subsection 16-17-203(1);
  - (d) the street address of its principal office, wherever located; and
  - (e) the names and addresses of its directors and principal officers.
- (2) The division shall deliver a copy of the prescribed form of annual report to each domestic nonprofit corporation and each foreign nonprofit corporation authorized to conduct affairs in this state.
- (3) Information in the annual report shall be current as of the date the annual report is executed on behalf of the nonprofit corporation.
- (4)
  - (a) The annual report of a domestic or foreign nonprofit corporation shall be delivered annually to the division no later than 60 days past the date the report was mailed by the division.
  - (b) Proof to the satisfaction of the division that the nonprofit corporation has mailed an annual report form is considered in compliance with this Subsection (4).
- (5)
  - (a) If an annual report contains the information required by this section, the division shall file it.
  - (b) If an annual report does not contain the information required by this section, the division shall promptly notify the reporting domestic or foreign nonprofit corporation in writing and return the annual report to it for correction.
  - (c) If an annual report that is rejected under Subsection (5)(b) was otherwise timely filed and is corrected to contain the information required by this section and delivered to the division within 30 days after the effective date of the notice of rejection, the annual report is considered to be timely filed.
- (6) The fact that an individual's name is signed on an annual report form is prima facie evidence for division purposes that the individual is authorized to certify the report on behalf of the nonprofit corporation.

- (7) The annual report form provided by the division may be designed to provide a simplified certification by the nonprofit corporation if no changes have been made in the required information from the last preceding report filed.
- (8) A domestic or foreign nonprofit corporation may, but may not be required to, deliver to the division for filing an amendment to its annual report reflecting any change in the information contained in its annual report as last amended.

Amended by Chapter 364, 2008 General Session

**16-6a-1608 Statement of person named as director or officer.**

Any person named as a director or officer of a domestic or foreign nonprofit corporation in an annual report or other document on file with the division may, if that person does not hold the named position, deliver to the division for filing a statement setting forth:

- (1) that person's name;
- (2) the domestic or foreign nonprofit corporation's name;
- (3) information sufficient to identify the report or other document in which the person is named as a director or officer; and
- (4)
  - (a) the date on which the person ceased to be a director or officer of the domestic or foreign nonprofit corporation; or
  - (b) a statement that the person did not hold the position for which the person was named in the corporate report or other document.

Enacted by Chapter 300, 2000 General Session

**16-6a-1609 Interrogatories by division.**

- (1)
  - (a) The division may give interrogatories reasonably necessary to ascertain whether a nonprofit corporation has complied with the provisions of this chapter applicable to the nonprofit corporation to:
    - (i) any domestic or foreign nonprofit corporation subject to the provisions of this chapter; and
    - (ii) to any officer or director of a nonprofit corporation described in Subsection (1)(a)(i).
  - (b) The interrogatories described in this Subsection (1) shall be answered within:
    - (i) 30 days after the mailing of the interrogatories; or
    - (ii) additional time as fixed by the division.
  - (c) The answers to the interrogatories shall be:
    - (i) full and complete; and
    - (ii) made in writing.
  - (d)
    - (i) If the interrogatories are directed to an individual, the interrogatories shall be answered by the individual.
    - (ii) If directed to a nonprofit corporation, the interrogatories shall be answered by:
      - (A) the chair of the board of directors of the nonprofit corporation;
      - (B) all of the nonprofit corporation's directors;
      - (C) one of the nonprofit corporation's officers; or
      - (D) any other person authorized to answer the interrogatories as the nonprofit corporation's agent.
  - (e)

- (i) The division need not file any document to which the interrogatories relate until the interrogatories are answered as provided in this section.
  - (ii) Notwithstanding Subsection (1)(e)(i), the division need not file a document to which the interrogatory relates if the answers to the interrogatory disclose that the document is not in conformity with the provisions of this chapter.
  - (f) The division shall certify to the attorney general, for such action as the attorney general considers appropriate, all interrogatories and answers to interrogatories that disclose a violation of this chapter.
- (2)
- (a) Interrogatories given by the division under Subsection (1), and the answers to interrogatories, may not be open to public inspection.
  - (b) The division may not disclose any facts or information obtained from the interrogatories or answers to the interrogatories, except:
    - (i) as the official duties of the division may require the facts or information to be made public; or
    - (ii) in the event the interrogatories or the answers to the interrogatories are required for evidence in any criminal proceedings or in any other action by this state.
- (3) Each domestic or foreign nonprofit corporation that knowingly fails or refuses to answer truthfully and fully, within the time prescribed by Subsection (1), interrogatories given to the domestic or foreign nonprofit corporation by the division in accordance with Subsection (1) is guilty of a class C misdemeanor and, upon conviction, shall be punished by a fine of not more than \$500.
- (4) Each officer and director of a domestic or foreign nonprofit corporation who knowingly fails or refuses to answer truthfully and fully, within the time prescribed by Subsection (1), interrogatories given to the officer or director by the division in accordance with Subsection (1) is guilty of a class B misdemeanor and, upon conviction, shall be punished by a fine of not more than \$1,000.
- (5) The attorney general may enforce this section in an action brought in:
- (a) the district court of the county in this state where the nonprofit corporation's principal office or registered office is located; or
  - (b) if the nonprofit corporation has no principal or registered office in this state, in the district court in and for Salt Lake County.

Amended by Chapter 197, 2002 General Session

**16-6a-1610 Scope of a member's right to inspect or receive copies.**

Notwithstanding the other provisions of this part, unless otherwise provided in the bylaws, a right of a member to inspect or receive information from a nonprofit corporation that is created by this part applies only to a voting member of the nonprofit corporation.

Enacted by Chapter 197, 2002 General Session