

Part 6 Members

16-6a-601 No requirement of members.

A nonprofit corporation is not required to have members.

Enacted by Chapter 300, 2000 General Session

16-6a-602 Number and classes.

- (1) A nonprofit corporation may have:
 - (a) one or more classes of voting or nonvoting members; and
 - (b) one or more members in each class described in Subsection (1)(a).
- (2) The bylaws may designate:
 - (a) the class or classes of members; and
 - (b) the qualifications and rights of the members of each class of members including the matters or items for which voting members may vote.

Enacted by Chapter 300, 2000 General Session

16-6a-603 Admission.

- (1) The bylaws may establish:
 - (a) criteria or procedures for admission of members; and
 - (b) the procedure for replacing:
 - (i) a member; or
 - (ii) a membership interest.
- (2) A person may not be admitted as a member without the person's consent.

Amended by Chapter 197, 2002 General Session

16-6a-604 Consideration.

Unless otherwise provided by the bylaws, a nonprofit corporation may admit members:

- (1) for no consideration; or
- (2) for such consideration as is determined by the board of directors.

Enacted by Chapter 300, 2000 General Session

16-6a-605 Differences in rights and obligations of members.

Unless otherwise provided by this chapter or the bylaws:

- (1) all voting members shall have the same rights and obligations with respect to voting and all other matters that this chapter specifically reserves to voting members; and
- (2) with respect to matters not reserved under Subsection (1), all members, including voting members, shall have the same rights and obligations.

Enacted by Chapter 300, 2000 General Session

16-6a-606 Transfers.

- (1) Unless otherwise provided by the bylaws, a member of a nonprofit corporation may not transfer:

- (a) a membership; or
 - (b) any right arising from a membership.
- (2) Where transfer rights have been provided, a restriction on transfer rights may not be binding with respect to a member holding a membership issued prior to the adoption of the restriction, unless the restriction is approved by the affected member.

Enacted by Chapter 300, 2000 General Session

16-6a-607 Creditor's action against member.

A proceeding may not be brought by a creditor to reach the liability, if any, of a member to the nonprofit corporation unless:

- (1)
- (a) final judgment has been rendered in favor of the creditor against the nonprofit corporation; and
 - (b) execution has been returned unsatisfied in whole or in part; or
- (2) a proceeding described in Subsection (1) would be useless.

Enacted by Chapter 300, 2000 General Session

16-6a-608 Resignation.

- (1) Unless otherwise provided by the bylaws, a member may resign at any time.
- (2) The resignation of a member does not relieve the member from any obligation or commitment the member may have to the nonprofit corporation incurred or made prior to resignation.

Enacted by Chapter 300, 2000 General Session

16-6a-609 Termination, expulsion, or suspension.

- (1) Unless otherwise provided by the bylaws, except pursuant to a procedure that is fair and reasonable:
- (a) a member of a nonprofit corporation may not be expelled or suspended; and
 - (b) membership in a nonprofit corporation may not be terminated or suspended.
- (2) For purposes of this section, a procedure is fair and reasonable when either:
- (a) the bylaws or a written policy of the board of directors set forth a procedure that provides:
 - (i) not less than 15 days prior written notice of:
 - (A) the expulsion, suspension, or termination; and
 - (B) the reasons for the expulsion, suspension, or termination; and
 - (ii) an opportunity for the member to be heard:
 - (A) orally or in writing;
 - (B) not less than five days before the effective date of the expulsion, suspension, or termination; and
 - (C) by one or more persons authorized to decide that the proposed expulsion, termination, or suspension not take place; or
 - (b) it is fair and reasonable taking into consideration all of the relevant facts and circumstances.
- (3) For purposes of this section, any written notice given by mail shall be given by first-class or certified mail sent to the last address of the member shown on the nonprofit corporation's records.
- (4) Unless otherwise provided by the bylaws, any proceeding challenging an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, shall

be commenced within one year after the effective date of the expulsion, suspension, or termination.

- (5) Unless otherwise provided by the bylaws, a member who has been expelled or suspended may be liable to the nonprofit corporation for dues, assessments, or fees as a result of an obligation incurred or commitment made prior to the effective date of the expulsion or suspension.
- (6) A mutual benefit corporation that complies with Section 70A-8-409.1 is considered to have followed a fair and reasonable procedure for purposes of this section without the existence of a written policy or bylaw otherwise required by this section.

Amended by Chapter 311, 2011 General Session

16-6a-610 Purchase of memberships.

- (1) Unless otherwise provided by the bylaws, a nonprofit corporation may not purchase the membership of a member:
 - (a) who resigns; or
 - (b) whose membership is terminated.
- (2)
 - (a) If so authorized, a nonprofit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by:
 - (i) its bylaws; or
 - (ii) agreement with the affected member.
 - (b) A payment permitted under Subsection (2)(a) may not violate:
 - (i) Section 16-6a-1301; or
 - (ii) any other provision of this chapter.
- (3) A mutual benefit corporation may purchase a member's membership if, after the purchase is completed:
 - (a) the mutual benefit corporation would be able to pay its debts as they become due in the usual course of its activities; and
 - (b) the mutual benefit corporation's total assets would at least equal the sum of its total liabilities.

Amended by Chapter 240, 2015 General Session

16-6a-611 No property right.

A member does not have any vested property right including any right relating to management, control, purpose, or duration of the nonprofit corporation, except as provided by:

- (1) the bylaws of a mutual benefit corporation; or
- (2) other applicable law.

Amended by Chapter 240, 2015 General Session

16-6a-612 Derivative suits.

- (1) Without affecting the right of a member or director to bring a proceeding against a nonprofit corporation or its directors or officers, a proceeding may be brought in the right of a nonprofit corporation to procure a judgment in its favor by a complainant who is:
 - (a) a voting member; or
 - (b) a director in a nonprofit corporation that does not have voting members.
- (2) A complainant may not commence or maintain a derivative proceeding unless the complainant:

- (a) is a voting member, or a director in a nonprofit corporation that does not have voting members, at the time the proceeding is brought; and
 - (b) fairly and adequately represents the nonprofit corporation's interests in enforcing the nonprofit corporation's right.
- (3)
- (a) A complainant may not commence a derivative proceeding until:
 - (i) a written demand is made upon the nonprofit corporation to take suitable action; and
 - (ii) 90 days have expired from the date the demand described in Subsection (3)(a)(i) is made, unless:
 - (A) the complainant is notified before the 90-day period expires that the demand is rejected by the nonprofit corporation; or
 - (B) irreparable injury to the nonprofit corporation would result by waiting for the 90-day period's expiration.
 - (b) A complaint in a derivative proceeding shall be:
 - (i) verified; and
 - (ii) allege with particularity the demand made to obtain action by the board of directors.
 - (c) A derivative proceeding shall comply with the procedures of Utah Rules of Civil Procedure, Rule 23.1.
 - (d) The court shall stay any derivative proceeding until the inquiry is completed and for an additional period as the court considers appropriate if:
 - (i) the nonprofit corporation commences an inquiry into the allegations made in the demand or complaint; and
 - (ii) a person or group described in Subsection (4) is conducting an active review of the allegations in good faith.
 - (e) If a nonprofit corporation proposes to dismiss a derivative proceeding pursuant to Subsection (4)(a), discovery by a complainant in the derivative proceeding:
 - (i) is limited to facts relating to:
 - (A) whether the person or group conducting the inquiry is independent and disinterested;
 - (B) the good faith of the inquiry; and
 - (C) the reasonableness of the procedures followed by the person or group conducting the inquiry; and
 - (ii) may not extend to any facts or substantive issues with respect to the act, omission, or other matter that is the subject matter of the derivative proceeding.
- (4)
- (a) A derivative proceeding shall be dismissed by the court on motion by the corporation if a person or group specified in Subsection (4)(b) or (4)(f) determines in good faith, after conducting a reasonable inquiry upon which the person's or group's conclusions are based, that the maintenance of the derivative proceeding is not in the best interest of the nonprofit corporation.
 - (b) Unless a panel is appointed pursuant to Subsection (4)(f), the determination in Subsection (4) (a) shall be made by:
 - (i) a majority vote of independent directors present at a meeting of the board of directors, if the independent directors constitute a quorum; or
 - (ii) a majority vote of a committee consisting of two or more independent directors appointed by a majority vote of independent directors present at a meeting of the board of directors, whether or not the independent directors appointing the committee constituted a quorum.
 - (c) None of the following by itself causes a director to be considered not independent for purposes of this section:

- (i) the nomination or election of the director by persons:
 - (A) who are defendants in the derivative proceeding; or
 - (B) against whom action is demanded;
 - (ii) the naming of the director as:
 - (A) a defendant in the derivative proceeding; or
 - (B) a person against whom action is demanded; or
 - (iii) the approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.
- (d) If a derivative proceeding is commenced after a determination is made rejecting a demand by a complainant, the complaint shall allege with particularity facts establishing either:
- (i) that a majority of the board of directors did not consist of independent directors at the time the determination was made; or
 - (ii) that the requirements of Subsection (4)(a) are not met.
- (e)
- (i) If a majority of the board of directors does not consist of independent directors at the time the determination is made to reject a demand by a shareholder, the corporation has the burden of proving that the requirements of Subsection (4)(a) are met.
 - (ii) If a majority of the board of directors consists of independent directors at the time the determination is made to reject a demand by a complainant, the plaintiff has the burden of proving that the requirements of Subsection (4)(a) are not met.
- (f)
- (i) The court may appoint a panel of one or more independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interest of the corporation.
 - (ii) If the court appoints a panel under Subsection (4)(f)(i), the plaintiff has the burden of proving that the requirements of Subsection (4)(a) are not met.
- (g) A person may appeal an interlocutory order of a court that grants or denies a motion to dismiss brought pursuant to Subsection (4)(a).
- (5) On termination of a derivative proceeding the court may order:
- (a) the nonprofit corporation to pay the plaintiff's reasonable expenses, including attorney fees, incurred in the proceeding, if it finds that the proceeding results in a substantial benefit to the nonprofit corporation;
 - (b) the plaintiff to pay a defendant's reasonable expenses, including attorney fees, incurred in defending the proceeding, if it finds that the proceeding was commenced or maintained:
 - (i) without reasonable cause; or
 - (ii) for an improper purpose; or
 - (c) a party to pay an opposing party's reasonable expenses, including attorney fees, incurred because of the filing of a pleading, motion, or other paper, if the court finds that the pleading, motion, or other paper was:
 - (i)
 - (A) not well grounded in fact, after reasonable inquiry; or
 - (B) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and
 - (ii) interposed for an improper purpose, such as to:
 - (A) harass;
 - (B) cause unnecessary delay; or
 - (C) cause needless increase in the cost of litigation.

Amended by Chapter 228, 2006 General Session

16-6a-613 Delegates.

- (1) A nonprofit corporation may provide in its bylaws for delegates having some or all of the authority of members.
- (2) The bylaws may set forth provisions relating to:
 - (a) the characteristics, qualifications, rights, limitations, and obligations of delegates, including their selection and removal;
 - (b) calling, noticing, holding, and conducting meetings of delegates; and
 - (c) carrying on corporate activities during and between meetings of delegates.

Enacted by Chapter 300, 2000 General Session