

Effective 5/12/2015

16-6a-1008 Conversion to a business corporation.

- (1)
 - (a) A domestic nonprofit corporation may convert to a corporation subject to Chapter 10a, Utah Revised Business Corporation Act, by filing an amendment of its articles of incorporation with the division pursuant to this section.
 - (b) The day on which a nonprofit domestic corporation files an amendment under this section, the domestic nonprofit corporation becomes a corporation subject to Chapter 10a, Utah Revised Business Corporation Act, except that, notwithstanding Section 16-10a-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 corporation shall:
 - (a) revise the statement of purpose;
 - (b) delete:
 - (i) the authorization for members; and
 - (ii) any other provisions relating to memberships;
 - (c) authorize shares:
 - (i) stating the number of shares; and
 - (ii) including the information required by Section 16-10a-601 with respect to each class of shares the corporation is to be authorized to issue;
 - (d) make such other changes as may be necessary or desired; and
 - (e) if the corporation has any members, provide for:
 - (i) the cancellation of the memberships; or
 - (ii) the conversion of the memberships to shares of the corporation.
- (3) If the nonprofit corporation has any voting members, an amendment to convert to a corporation shall be approved by all of the voting members regardless of limitations or restrictions on the voting rights of the members.
- (4) If an amendment to the articles of incorporation filed pursuant to this section is included in a merger agreement, this section applies, except that any provisions for cancellation or conversion of memberships:
 - (a) shall be in the merger agreement; and
 - (b) may not be in the amendment of the articles of incorporation.
- (5) A conversion under this section may not result in a violation, directly or indirectly, of:
 - (a) Section 16-6a-1301; or
 - (b) any other provision of this chapter.
- (6) The conversion of a nonprofit corporation into a corporation does not affect:
 - (a) an obligation or liability of the converting nonprofit corporation incurred before its conversion to a corporation; or
 - (b) the personal liability of any person incurred before the conversion.
- (7)
 - (a)
 - (i) When a conversion is effective under this section, for purposes of the laws of this state, the things listed in Subsection (7)(a)(ii):
 - (A) vest in the corporation to which the nonprofit corporation converts;
 - (B) are the property of the corporation; and

- (C) are not considered transferred by the converting nonprofit corporation to the corporation by operation of this Subsection (7)(a).
- (ii) This Subsection (7)(a) applies to the following of the converting nonprofit corporation:
 - (A) its rights, privileges, and powers;
 - (B) its interests in property, whether real, personal, or mixed;
 - (C) debts due to the converting nonprofit corporation;
 - (D) the debts, liabilities, and duties of the converting nonprofit corporation;
 - (E) the rights and obligations under contract of the converting nonprofit corporation; and
 - (F) other things and causes of action belonging to the converting nonprofit corporation.
- (b) The title to any real property vested by deed or otherwise in a nonprofit corporation converting to a 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 nonprofit corporation that is described in Subsection (6)(a) or (b) is preserved unimpaired.
- (d) A debt, liability, or duty of a converting nonprofit corporation:
 - (i) remains attached to the corporation to which the nonprofit corporation converts; and
 - (ii) may be enforced against the corporation to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the corporation in its capacity as a corporation.
- (e) A converted nonprofit corporation upon conversion to a corporation pursuant to this section is considered the same entity as the corporation.
- (f) In connection with a conversion of a nonprofit corporation to a corporation under this section, the interests or rights in the nonprofit 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 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 nonprofit 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 nonprofit corporation, but constitutes a continuation of the existence of the nonprofit corporation in the form of a corporation.

Amended by Chapter 240, 2015 General Session