

**Superseded 5/12/2015**

**16-6a-102 Definitions.**

As used in this chapter:

- (1)
  - (a) "Address" means a location where mail can be delivered by the United States Postal Service.
  - (b) "Address" includes:
    - (i) a post office box number;
    - (ii) a rural free delivery route number; and
    - (iii) a street name and number.
- (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, the person specified.
- (3) "Articles of incorporation" include:
  - (a) amended articles of incorporation;
  - (b) restated articles of incorporation;
  - (c) articles of merger; and
  - (d) a document of a similar import to the documents described in Subsections (3)(a) through (c).
- (4) "Assumed corporate name" means a name assumed for use in this state:
  - (a) by a:
    - (i) foreign corporation pursuant to Section 16-10a-1506; or
    - (ii) a foreign nonprofit corporation pursuant to Section 16-6a-1506; and
  - (b) because the corporate name of the foreign corporation described in Subsection (4)(a) is not available for use in this state.
- (5)
  - (a) Except as provided in Subsection (5)(b), "board of directors" means the body authorized to manage the affairs of a domestic or foreign nonprofit corporation.
  - (b) Notwithstanding Subsection (5)(a), a person may not be considered a member of the board of directors because of a power delegated to that person pursuant to Subsection 16-6a-801(2).
- (6)
  - (a) "Bylaws" means the one or more codes of rules, other than the articles of incorporation, adopted pursuant to this chapter for the regulation or management of the affairs of a domestic or foreign nonprofit corporation irrespective of the one or more names by which the codes of rules are designated.
  - (b) "Bylaws" includes:
    - (i) amended bylaws; and
    - (ii) restated bylaws.
- (7)
  - (a) "Cash" or "money" means:
    - (i) legal tender;
    - (ii) a negotiable instrument; or
    - (iii) other cash equivalent readily convertible into legal tender.
  - (b) "Cash" and "money" are used interchangeably in this chapter.
- (8)
  - (a) "Class" means a group of memberships that has the same right with respect to voting, dissolution, redemption, transfer, or other characteristics.
  - (b) For purposes of Subsection (8)(a), a right is considered the same if it is determined by a formula applied uniformly to a group of memberships.
- (9)

- (a) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed the writing.
- (b) "Conspicuous" includes printing or typing in:
  - (i) italics;
  - (ii) boldface;
  - (iii) contrasting color;
  - (iv) capitals; or
  - (v) underlining.
- (10) "Control" or a "controlling interest" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity by:
  - (a) the ownership of voting shares;
  - (b) contract; or
  - (c) a means other than those specified in Subsection (10)(a) or (b).
- (11) Subject to Section 16-6a-207, "cooperative nonprofit corporation" or "cooperative" means a nonprofit corporation organized or existing under this chapter.
- (12) "Corporate name" means:
  - (a) the name of a domestic corporation as stated in the domestic corporation's articles of incorporation;
  - (b) the name of a domestic nonprofit corporation as stated in the domestic nonprofit corporation's articles of incorporation;
  - (c) the name of a foreign corporation as stated in the foreign corporation's:
    - (i) articles of incorporation; or
    - (ii) document of similar import to articles of incorporation; or
  - (d) the name of a foreign nonprofit corporation as stated in the foreign nonprofit corporation's:
    - (i) articles of incorporation; or
    - (ii) document of similar import to articles of incorporation.
- (13) "Corporation" or "domestic corporation" means a corporation for profit that:
  - (a) is not a foreign corporation; and
  - (b) is incorporated under or subject to Chapter 10a, Utah Revised Business Corporation Act.
- (14) "Delegate" means a person elected or appointed to vote in a representative assembly:
  - (a) for the election of a director; or
  - (b) on matters other than the election of a director.
- (15) "Deliver" includes delivery by mail or another means of transmission authorized by Section 16-6a-103, except that delivery to the division means actual receipt by the division.
- (16) "Director" means a member of the board of directors.
- (17)
  - (a) "Distribution" means the payment of a dividend or any part of the income or profit of a nonprofit corporation to the nonprofit corporation's:
    - (i) members;
    - (ii) directors; or
    - (iii) officers.
  - (b) "Distribution" does not include a fair-value payment for:
    - (i) a good sold; or
    - (ii) a service received.
- (18) "Division" means the Division of Corporations and Commercial Code.
- (19) "Effective date," when referring to a document filed by the division, means the time and date determined in accordance with Section 16-6a-108.
- (20) "Effective date of notice" means the date notice is effective as provided in Section 16-6a-103.

(21)

(a) "Employee" includes an officer of a nonprofit corporation.

(b)

(i) Except as provided in Subsection (21)(b)(ii), "employee" does not include a director of a nonprofit corporation.

(ii) Notwithstanding Subsection (21)(b)(i), a director may accept one or more duties that make that director an employee of a nonprofit corporation.

(22) "Executive director" means the executive director of the Department of Commerce.

(23) "Entity" includes:

(a) a domestic or foreign corporation;

(b) a domestic or foreign nonprofit corporation;

(c) a limited liability company;

(d) a profit or nonprofit unincorporated association;

(e) a business trust;

(f) an estate;

(g) a partnership;

(h) a trust;

(i) two or more persons having a joint or common economic interest;

(j) a state;

(k) the United States; or

(l) a foreign government.

(24) "Foreign corporation" means a corporation for profit incorporated under a law other than the laws of this state.

(25) "Foreign nonprofit corporation" means an entity:

(a) incorporated under a law other than the laws of this state; and

(b) that would be a nonprofit corporation if formed under the laws of this state.

(26) "Governmental entity" means:

(a)

(i) the executive branch of the state;

(ii) the judicial branch of the state;

(iii) the legislative branch of the state;

(iv) an independent entity, as defined in Section 63E-1-102;

(v) a political subdivision of the state;

(vi) a state institution of higher education, as defined in Section 53B-3-102;

(vii) an entity within the state system of public education; or

(viii) the National Guard; or

(b) any of the following that is established or controlled by a governmental entity listed in Subsection (26)(a) to carry out the public's business:

(i) an office;

(ii) a division;

(iii) an agency;

(iv) a board;

(v) a bureau;

(vi) a committee;

(vii) a department;

(viii) an advisory board;

(ix) an administrative unit; or

(x) a commission.

- (27) "Governmental subdivision" means:
- (a) a county;
  - (b) a city;
  - (c) a town; or
  - (d) another type of governmental subdivision authorized by the laws of this state.
- (28) "Individual" means:
- (a) a natural person;
  - (b) the estate of an incompetent individual; or
  - (c) the estate of a deceased individual.
- (29) "Internal Revenue Code" means the federal "Internal Revenue Code of 1986," as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States of America.
- (30)
- (a) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the United States mail, properly addressed, first-class postage prepaid.
  - (b) "Mail," "mailed," or "mailing" includes registered or certified mail for which the proper fee is paid.
- (31)
- (a) "Member" means one or more persons identified or otherwise appointed as a member of a domestic or foreign nonprofit corporation as provided:
    - (i) in the articles of incorporation;
    - (ii) in the bylaws;
    - (iii) by a resolution of the board of directors; or
    - (iv) by a resolution of the members of the nonprofit corporation.
  - (b) "Member" includes "voting member."
- (32) "Membership" refers to the rights and obligations of a member or members.
- (33) "Mutual benefit corporation" means a nonprofit corporation:
- (a) that issues shares of stock to its members evidencing a right to receive distribution of water or otherwise representing property rights; or
  - (b) all of whose assets are contributed or acquired by or for the members of the nonprofit corporation or their predecessors in interest to serve the mutual purposes of the members.
- (34) "Nonprofit corporation" or "domestic nonprofit corporation" means an entity that:
- (a) is not a foreign nonprofit corporation; and
  - (b) is incorporated under or subject to this chapter.
- (35) "Notice" is as provided in Section 16-6a-103.
- (36) "Party related to a director" means:
- (a) the spouse of the director;
  - (b) a child of the director;
  - (c) a grandchild of the director;
  - (d) a sibling of the director;
  - (e) a parent of the director;
  - (f) the spouse of an individual described in Subsections (36)(b) through (e);
  - (g) an individual having the same home as the director;
  - (h) a trust or estate of which the director or another individual specified in this Subsection (36) is a substantial beneficiary; or
  - (i) any of the following of which the director is a fiduciary:
    - (i) a trust;
    - (ii) an estate;

- (iii) an incompetent;
  - (iv) a conservatee; or
  - (v) a minor.
- (37) "Person" means an:
- (a) individual; or
  - (b) entity.
- (38) "Principal office" means:
- (a) the office, in or out of this state, designated by a domestic or foreign nonprofit corporation as its principal office in the most recent document on file with the division providing that information, including:
    - (i) an annual report;
    - (ii) an application for a certificate of authority; or
    - (iii) a notice of change of principal office; or
  - (b) if no principal office can be determined, a domestic or foreign nonprofit corporation's registered office.
- (39) "Proceeding" includes:
- (a) a civil suit;
  - (b) arbitration;
  - (c) mediation;
  - (d) a criminal action;
  - (e) an administrative action; or
  - (f) an investigatory action.
- (40) "Receive," when used in reference to receipt of a writing or other document by a domestic or foreign nonprofit corporation, means the writing or other document is actually received:
- (a) by the domestic or foreign nonprofit corporation at:
    - (i) its registered office in this state; or
    - (ii) its principal office;
  - (b) by the secretary of the domestic or foreign nonprofit corporation, wherever the secretary is found; or
  - (c) by another person authorized by the bylaws or the board of directors to receive the writing or other document, wherever that person is found.
- (41)
- (a) "Record date" means the date established under Part 6, Members, or Part 7, Member Meetings and Voting, on which a nonprofit corporation determines the identity of the nonprofit corporation's members.
  - (b) The determination described in Subsection (41)(a) shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.
- (42) "Registered agent" means the registered agent of:
- (a) a domestic nonprofit corporation; or
  - (b) a foreign nonprofit corporation.
- (43) "Registered office" means the office within this state designated by a domestic or foreign nonprofit corporation as its registered office in the most recent document on file with the division providing that information, including:
- (a) articles of incorporation;
  - (b) an application for a certificate of authority; or
  - (c) a notice of change of registered office.
- (44) "Secretary" means the corporate officer to whom the bylaws or the board of directors delegates responsibility under Subsection 16-6a-818(3) for:

- (a) the preparation and maintenance of:
    - (i) minutes of the meetings of:
      - (A) the board of directors; or
      - (B) the members; and
    - (ii) the other records and information required to be kept by the nonprofit corporation pursuant to Section 16-6a-1601; and
  - (b) authenticating records of the nonprofit corporation.
- (45) "Shareholder" means a person in whose name a share is registered in the records of a nonprofit corporation.
- (46) "Share" means a unit of interest in a nonprofit corporation.
- (47) "State," when referring to a part of the United States, includes:
- (a) a state;
  - (b) a commonwealth;
  - (c) the District of Columbia;
  - (d) an agency or governmental and political subdivision of a state, commonwealth, or District of Columbia;
  - (e) territory or insular possession of the United States; or
  - (f) an agency or governmental and political subdivision of a territory or insular possession of the United States.
- (48) "Street address" means:
- (a)
    - (i) street name and number;
    - (ii) city or town; and
    - (iii) United States post office zip code designation; or
  - (b) if, by reason of rural location or otherwise, a street name, number, city, or town does not exist, an appropriate description other than that described in Subsection (48)(a) fixing as nearly as possible the actual physical location, but only if the information includes:
    - (i) the rural free delivery route;
    - (ii) the county; and
    - (iii) the United States post office zip code designation.
- (49) "Tribe" means a tribe, band, nation, pueblo, or other organized group or community of Indians, including an Alaska Native village, that is legally recognized as eligible for and is consistent with a special program, service, or entitlement provided by the United States to Indians because of their status as Indians.
- (50) "Tribal nonprofit corporation" means a nonprofit corporation:
- (a) incorporated under the law of a tribe; and
  - (b) that is at least 51% owned or controlled by the tribe.
- (51) "United States" includes a district, authority, office, bureau, commission, department, and another agency of the United States of America.
- (52) "Vote" includes authorization by:
- (a) written ballot; and
  - (b) written consent.
- (53)
- (a) "Voting group" means all the members of one or more classes of members or directors that, under this chapter, the articles of incorporation, or the bylaws, are entitled to vote and be counted together collectively on a matter.
  - (b) All members or directors entitled by this chapter, the articles of incorporation, or the bylaws to vote generally on a matter are for that purpose a single voting group.

(54)

- (a) "Voting member" means a person entitled to vote for all matters required or permitted under this chapter to be submitted to a vote of the members, except as otherwise provided in the articles of incorporation or bylaws.
- (b) A person is not a voting member solely because of:
  - (i) a right the person has as a delegate;
  - (ii) a right the person has to designate a director; or
  - (iii) a right the person has as a director.
- (c) Except as the bylaws may otherwise provide, "voting member" includes a "shareholder" if the nonprofit corporation has shareholders.