

CORPORATIONS

CHAPTER 89

SENATE BILL NO. 2266

(Senators Hogue, Andrist, Armstrong, Burckhard, Grabinger)
(Representative Glassheim)

AN ACT to amend and reenact sections 10-06.1-17 and 10-15-05, subsection 2 of section 10-15-12, section 10-19.1-01, subsection 1 of section 10-19.1-10, sections 10-19.1-17 and 10-19.1-115, subsection 2 of section 10-19.1-146, subsection 1 of section 10-32-07, section 10-32-14, subsection 1 of section 10-33-06, section 10-33-14, subsection 3 of section 10-34-04, and subsection 2 of section 10-35-28 of the North Dakota Century Code, relating to cooperative association of articles of incorporation and address of the principal office, business corporation definitions, articles of incorporation, amendment of articles of incorporation, involuntary dissolution, limited liability company articles of organization and amendment of the articles of organization, nonprofit corporation articles of incorporation and amendment of articles of incorporation, and contents of the registration a real estate investment trust.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-06.1-17 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-17. Annual report - Contents - Filing requirements.

Before April sixteenth of each year, every corporation engaged in farming or ranching after June 30, 1981, and every limited liability company engaged in farming or ranching shall file with the secretary of state an annual report signed as provided in subsection ~~5354~~ of section 10-19.1-01 if a corporation and subsection 58 of section 10-32-02 if a limited liability company. If the corporation or limited liability company is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or limited liability company by the receiver or trustee. An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this section or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this section meets the filing date requirement. An annual report must include the following information with respect to the preceding calendar year:

1. The name of the corporation or limited liability company.
2. The name of the registered agent of the corporation or limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of the registered office of the corporation or limited liability company in this state.

3. With respect to each corporation:
 - a. A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
 - b. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
4. With respect to each shareholder or member:
 - a. The name and address of each, including the names and addresses and relationships of beneficiaries of trusts and estates which own shares or membership interests;
 - b. The number of shares or membership interests or percentage of shares or membership interests owned by each;
 - c. The relationship of each;
 - d. A statement of whether each is a citizen or permanent resident alien of the United States; and
 - e. A statement of whether at least one is an individual residing on or operating the farm or ranch.
5. With respect to management:
 - a. If a corporation, then the names and addresses of the officers and members of the board of directors; or
 - b. If a limited liability company, then the names and addresses of the managers and members of the board of governors.
6. A statement listing the acreage [hectarage] and location listed by section, township, range, and county of all land in the state owned or leased by the corporation or limited liability company and used for farming or ranching. The statement must also designate which, if any, of the acreage [hectarage] is leased from or jointly owned with any shareholder or member and list the name of the shareholder or member with that acreage [hectarage].
7. A statement of the percentage of the annual average gross income of the corporation or limited liability company which has been derived from farming or ranching operations over the previous five years or for each year of existence if less than five years.
8. A statement of the percentage of gross income of the corporation or limited liability company derived from nonfarm rent, nonfarm royalties, dividends, interest, and annuities during the period covered by the report.
9. A corporation engaged in farming which fails to file an annual report is subject to the penalties provided in section 10-19.1-147 except that the penalties must be calculated from the date of the report required by this section.

10. A limited liability company engaged in farming which fails to file an annual report is subject to the penalties provided in subsections 5 and 6 of section 10-32-149 except that the penalties must be calculated from the date of the report required by this section.

SECTION 2. AMENDMENT. Section 10-15-05 of the North Dakota Century Code is amended and reenacted as follows:

10-15-05. Articles - Provisions.

The articles of association shall set forth:

1. The name of the cooperative.
2. The period of existence, unless perpetual. Cooperatives now organized under the provisions of chapter 4-07 or 10-15 are granted perpetual existence irrespective of the period of existence set forth in articles of incorporation. Any such cooperative may nevertheless amend its articles to provide for a limited period of existence.
3. The purposes for which organized. It is sufficient to state that the cooperative may engage in any activity within the purposes for which cooperatives may be organized, and all such activities shall then be deemed within its purposes, subject to express limitations.
4. Whether the cooperative is organized with or without capital stock.
5. The designation of classes of members, if more than one.
6. The number and par value of shares of each authorized class of stock. If more than one class is authorized, the designation, preferences, limitations, and relative rights of each class shall also be set forth.
7. Which classes of stock are membership stock.
8. As to each class of stock, the rate of dividend, or that the rate of dividend may be fixed by the board, or that no dividend will be paid.
9. Any reservation of a right to acquire or recall any stock.
10. The basis of distribution of assets in the event of liquidation.
11. The complete address ~~in this state~~ where the cooperative's principal office is to be located ~~or the name and complete address in this state of the cooperative's registered agent.~~
12. If the address of the principal office is not located in North Dakota, the name and complete address in this state of the cooperative's registered agent.
13. The name and address of each incorporator.
- ~~13-14.~~ The names and addresses of at least five incorporators who will act as the temporary board.
- ~~14-15.~~ The effective date of the cooperative if a later date than that on which the certificate of association is issued by the secretary of state. A later effective

date may not be later than ninety days after the date on which the certificate of association is issued.

SECTION 3. AMENDMENT. Subsection 2 of section 10-15-12 of the North Dakota Century Code is amended and reenacted as follows:

2. The board may establish a registered agent and address of the registered agent or change the location of the principal office by causing a statement in writing to be filed as an amendment to the articles as provided in section 10-15-53 or, if only a change of address of the principal office is required, an amendment need not be filed; however, the change of address of the principal office must then be reported on the annual report filed after the change. Such if a written statement is filed, the statement shall set forth the name of the cooperative, the name and address of the registered agent as established, and the location of its principal office as ~~established or~~ changed. For the purposes of this chapter, the post-office address of an existing cooperative becoming subject to this chapter, as set forth in the articles for its business office, shall be considered its registered office and the secretary of the cooperative shall be considered its registered agent unless the articles are amended otherwise.

SECTION 4. AMENDMENT. Section 10-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-01. Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "Acquiring corporation" means the domestic or foreign corporation that acquires the shares of a corporation in an exchange.
2. "Acquiring organization" means the foreign or domestic organization acquiring the ownership interests of another foreign or domestic organization participating in an exchange.
3. "Address" means:
 - a. In the case of a registered office or principal executive office, the mailing address, including the zip code, of the actual office location, which may not be only a post-office box; and
 - b. In any other case, the mailing address, including the zip code.
4. "Articles" means:
 - a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a demand retaining the two-thirds majority for shareholder approval of certain transactions, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of abandonment, articles of conversion, and articles of dissolution.

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- b. In the case of a foreign corporation, the term includes all records serving a similar function required to be filed with the secretary of state or other officer of the state of incorporation of the foreign corporation.
 5. "Authenticated electronic communication" means:
 - a. That the electronic communication is delivered:
 - (1) To the principal place of business of the corporation; or
 - (2) To an officer or agent of the corporation authorized by the corporation to receive the electronic communication; and
 - b. That the electronic communication sets forth information from which the corporation can reasonably conclude that the electronic communication was sent by the purported sender.
 6. "Ballot" means a written ballot or a ballot transmitted by electronic communications.
 7. "Board" or "board of directors" means the board of directors of a corporation.
 8. "Board member" means:
 - a. An individual serving on the board of directors in the case of a corporation; and
 - b. An individual serving on the board of governors in the case of a limited liability company.
 9. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how that code is designated.
 10. "Class", when used with reference to ownership interests, means a category of ownership interests that differs in designation or one or more rights or preferences from another category of ownership interests of the organization.
 11. "Closely held corporation" means a corporation that does not have more than thirty-five shareholders.
 12. "Constituent corporation" means a corporation or a foreign corporation that:
 - a. In a merger, is either the surviving corporation or a foreign or domestic corporation that is merged into the surviving organization; or
 - b. In an exchange, is either the acquiring corporation or a foreign or domestic corporation whose shares are acquired by the acquiring organization.
 13. "Constituent organization" means an organization that:
 - a. In a merger, is either the surviving organization or an organization that is merged into the surviving organization; or
 - b. In an exchange, is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.

14. "Converted organization" means the organization into which a converting organization converts pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.
15. "Converting organization" means an organization that converts into another organization pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.
16. "Corporation" or "domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.
17. "Director" means a member of the board.
18. "Distribution" means a direct or indirect transfer of money or other property, other than its own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of its shareholders in respect of its shares, and may be in the form of a dividend, an interim distribution, or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of its shares, or otherwise.
19. "Division" or "combination" means dividing or combining shares of a class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.
20. "Domestic organization" means an organization created under the laws of this state.
21. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
22. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper that:
 - a. Creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
 - b. May be directly reproduced in paper form by the recipient through an automated process.
23. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
24. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.
25. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
 - a. That a record meeting the applicable requirements of this chapter, together with the fees provided in section 10-19.1-147, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.

- b. That the secretary of state did then:
 - (1) Record the actual date on which the record was filed, and if different the effective date of filing; and
 - (2) Record the record in the office of the secretary of state.
- 26. "Foreign corporation" means a corporation organized for profit which is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under this chapter.
- 27. "Foreign limited liability company" means a limited liability company organized under laws other than the laws of this state for a purpose for which a limited liability company may be organized under chapter 10-32.
- 28. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.
- 29. "Good faith" means honesty in fact in the conduct of an act or transaction.
- 30. "Governing body" means for an organization that is:
 - a. A corporation, its board of directors;
 - b. A limited liability company, its board of governors; or
 - c. Any other organization, the body selected by its owners that has the ultimate power to determine the policies of the organization and to control its policies.
- 31. "Governing statute" of an organization means:
 - a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:
 - (1) If a corporation, then this chapter;
 - (2) If a limited liability company, then chapter 10-32;
 - (3) If a general partnership, then chapters 45-13 through 45-21;
 - (4) If a limited partnership, then chapter 45-10.2;
 - (5) If a limited liability partnership, then chapter 45-22; and
 - (6) If a limited liability limited partnership, then chapter 45-23; and
 - b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and under which the internal affairs of the organization are governed.
- 32. "Intentionally" means that the person referred to has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute:

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- a. If the person intentionally does the act or causes the result prohibited by the statute; or
 - b. If the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.
33. "Legal representative" means a person empowered to act for another person, including an agent, a manager, an officer, a partner, or an associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.
 34. "Limited liability company" or "domestic limited liability company" means a limited liability company, other than a foreign limited liability company, organized under or governed by chapter 10-32.
 35. "Nonprofit corporation" means a corporation, whether domestic or foreign, incorporated under or governed by chapter 10-33.
 36. "Notice":
 - a. Is given by a shareholder of a corporation to the corporation or an officer of the corporation:
 - (1) When in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation; or
 - (2) When given by a form of electronic communication consented to by the corporation to which the notice is given if by:
 - (a) Facsimile communication, when directed to a telephone number at which the corporation has consented to receive notice.
 - (b) Electronic mail, when directed to an electronic mail address at which the corporation has consented to receive notice.
 - (c) Posting on an electronic network on which the corporation has consented to receive notice, together with separate notice to the corporation of the specific posting, upon the later of:
 - [1] The posting; or
 - [2] The giving of the separate notice.
 - (d) Any other form of electronic communication by which the corporation has consented to receive notice, when directed to the corporation.
 - b. Is given by a publicly held corporation to a shareholder if the notice is addressed to the shareholder or group of shareholders in a manner permitted by the rules and regulations under the Securities Exchange Act of 1934, as amended, provided that the corporation has first received any

- affirmative written consent or implied consent required under those rules and regulations.
- c. Is given, in all other cases:
- (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
 - (2) When deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly as practicable to the person at an address designated by the person or at the last-known address of the person;
 - (3) When handed to the person;
 - (4) When left at the office of the person with a clerk or other person in charge of the office or:
 - (a) If there is no one in charge, when left in a conspicuous place in the office; or
 - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing there;
 - (5) When given by a form of electronic communication consented to by the person to whom the notice is given if by:
 - (a) Facsimile communication, when directed to a telephone number at which the person has consented to receive notice.
 - (b) Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice.
 - (c) Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
 - [1] The posting; or
 - [2] The giving of the separate notice.
 - (d) Any other form of electronic communication by which the person has consented to receive notice, when directed to the person; or
 - (6) When the method is fair and reasonable when all of the circumstances are considered.
- d. Is given by mail when deposited in the United States mail with sufficient postage affixed.
- e. Is given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision c, after having made sufficient arrangements for payment by the sender.

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- f. Is deemed received when it is given.
37. "Officer" means an individual who is eighteen years of age or more who is:
- a. Elected, appointed, or otherwise designated as the president, the treasurer, or any other officer pursuant to section 10-19.1-52; or
 - b. Deemed elected as an officer pursuant to section 10-19.1-56.
38. "Organization":
- a. Means, whether domestic or foreign, a corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, or any other person subject to a governing statute; but
 - b. Excludes:
 - (1) Any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction; and
 - (2) Any nonprofit limited liability company, whether a domestic nonprofit limited liability company which is organized under chapter 10-36 or a foreign nonprofit limited liability company which is organized in another jurisdiction.
39. "Originating records" means for an organization that is:
- a. A corporation, its articles of incorporation;
 - b. A limited liability company, its articles of organization;
 - c. A limited partnership, its certificate of limited partnership;
 - d. A limited liability partnership, its registration; or
 - e. A limited liability limited partnership, its certificate of limited liability limited partnership.
40. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.
41. "Owners" means the holders of ownership interests in an organization.
42. "Ownership interests" means for a domestic or foreign organization that is:
- a. A corporation, its shares;
 - b. A limited liability company, its membership interests;
 - c. A limited partnership, its partnership interests;
 - d. A general partnership, its partnership interests;
 - e. A limited liability partnership, its partnership interests;

- f. A limited liability limited partnership, its partnership interests; or
 - g. Any other organization, its governance or transferable interests.
43. "Parent" of a specified organization means an organization that directly, or indirectly through related organizations, owns more than fifty percent of the voting power of the ownership interests entitled to vote for directors or other members of the governing body of the specified organization.
44. "Principal executive office" means:
- a. If the corporation has an elected or appointed president, then an office where the elected or appointed president of a corporation has an office; or
 - b. If the corporation has no elected or appointed president, then the registered office of the corporation.
45. "Publicly held corporation" means a corporation that has a class of equity securities registered pursuant to section 12 of the Securities Exchange Act of 1934 [15 U.S.C. 78L], or is subject to section 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78o(d)].
46. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- 46-47. "Registered office" means the place in this state designated in a corporation's articles of incorporation or in a foreign corporation's certificate of authority as the registered office.
- 47-48. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:
- a. Owns, directly or indirectly, at least fifty percent of the ownership interests of another organization;
 - b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or
 - c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.
- 48-49. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.
- 49-50. "Security" has the meaning given in section 10-04-02.
- 50-51. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to a corporation's articles, that have some of the same rights and preferences as other shares within the same

class, but that differ in designation or one or more rights and preferences from another category of shares within that class.

51-52. "Share" means one of the units, however designated, into which the shareholders' proprietary interests of the shareholder in a corporation are divided.

52-53. "Shareholder" means a person registered on the books or records of a corporation or the corporation's transfer agent or registrar as the owner of whole or fractional shares of the corporation.

53-54. "Signed" means:

- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the record, is placed on a record with the present intention to authenticate that record; and
- b. With respect to a record required by this chapter to be filed with the secretary of state, that:
 - (1) The record is signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the directors as required under section 10-19.1-46 or the shareholders as required under section 10-19.1-74; and
 - (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.

54-55. "Subscriber" means a person that subscribes for shares in a corporation, whether before or after incorporation.

55-56. "Subsidiary" of a specified organization means an organization having more than fifty percent of the voting power of its ownership interests entitled to vote for directors, governors, or other members of the governing body of the organization owned directly, or indirectly, through related organizations, by the specified organization.

56-57. "Surviving corporation" means the domestic or foreign corporation resulting from a merger which:

- a. May preexist the merger; or
- b. May be created by the merger.

57-58. "Surviving organization" means the organization resulting from a merger which:

- a. May preexist the merger; or
- b. May be created by the merger.

58-59. "Vote" includes authorization by written action.

59-60. "Written action" means:

- a. A written record signed by all of the persons required to take the action; or
- b. The counterparts of a written record signed by any of the persons taking the action described.
 - (1) Each counterpart constitutes the action of the person signing; and
 - (2) All the counterparts, taken together, constitute one written action by all of the persons signing the counterparts.

SECTION 5. AMENDMENT. Subsection 1 of section 10-19.1-10 of the North Dakota Century Code is amended and reenacted as follows:

1. The articles of incorporation must contain:
 - a. The name of the corporation.
 - b. The name of the registered agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of that noncommercial registered agent in this state.
 - c. The address of the principal executive office.
 - d. The aggregate number of shares that the corporation has authority to issue.
 - d-e. The name and address of each incorporator.
 - e-f. The effective date of incorporation if a later date than that on which the certificate of incorporation is issued by the secretary of state, which may not be later than ninety days after the date on which the certificate of incorporation is issued.

SECTION 6. AMENDMENT. Section 10-19.1-17 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-17. Amendment of articles.

The articles of a corporation may be amended at any time to include or modify any provision that is required or permitted to appear in the articles or to omit any provision not required to be included in the articles, except that when articles are amended to restate them, the name and address of each incorporator and each initial director may be omitted. If only a change of address of the principal executive office is required, an amendment need not be filed; however, the change of address of the principal executive office must then be reported on the annual report filed after the change. Unless otherwise provided in this chapter, the articles may be amended or modified only in accordance with sections 10-19.1-18, 10-19.1-19, and 10-19.1-20.

SECTION 7. AMENDMENT. Section 10-19.1-115 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-115. Involuntary dissolution.

1. This section applies to corporations that are not publicly held corporations.

- 4.2. A court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business:
- a. In a supervised voluntary dissolution pursuant to section 10-19.1-114;
 - b. In an action by a shareholder when it is established that:
 - (1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and the corporation or the parties have not provided for a procedure to resolve the dispute;
 - (2) The directors or those in control of the corporation have acted fraudulently or illegally toward one or more shareholders in their capacities as shareholders or directors of any corporation or as officers or employees of a closely held corporation;
 - (3) The directors or those in control of the corporation have acted in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders or directors of a corporation that is not a publicly held corporation or as officers or employees of a closely held corporation;
 - (4) The shareholders of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;
 - (5) The corporate assets are being misapplied or wasted; or
 - (6) The period of duration as provided in the articles has expired and has not been extended as provided in section 10-19.1-124;
 - c. In an action by a creditor when:
 - (1) The claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied; or
 - (2) The corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is unable to pay its debts in the ordinary course of business; or
 - d. In an action by the attorney general to dissolve the corporation in accordance with section 10-19.1-118 when it is established that a decree of dissolution is appropriate.
- 2.3. In determining whether to order equitable relief or dissolution, the court shall take into consideration the financial condition of the corporation but may not refuse to order equitable relief or dissolution solely on the ground that the corporation has accumulated or current operating profits.

- 3-4. In an action under subdivision b of subsection 1 involving a corporation that is not a publicly held corporation at the time the action is commenced and in which one or more of the circumstances described in that subdivision is established, the court, upon motion of a corporation or a shareholder or beneficial owner of shares of the corporation, may order the sale by a plaintiff or a defendant of all shares of the corporation held by the plaintiff or defendant to either the corporation or the moving shareholders, whichever is specified in the motion, if the court determines in its discretion that an order would be fair and equitable to all parties under the circumstances of the case.
- a. The purchase price of any shares so sold must be the fair value of the shares as of the date of the commencement of the action or as of another date found equitable by the court. However, if the shares in question are then subject to sale and purchase pursuant to the bylaws of the corporation, a shareholder control agreement, the terms of the shares, or otherwise, the court shall order the sale for the price and on the terms as set forth, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.
 - b. Within five days after the entry of the order, the corporation shall provide each selling shareholder or beneficial owner with the information it is required to provide under subsection 6 of section 10-19.1-88.
 - c. If the parties are unable to agree on fair value within forty days of entry of the order, the court shall determine the fair value of the shares under the provisions of subsection 10 of section 10-19.1-88 and may allow interest or costs as provided in subsections 1 and 11 of section 10-19.1-88.
 - d. The purchase price must be paid in one or more installments as agreed on by the parties, or, if no agreement can be reached within forty days of entry of the order, as ordered by the court. Upon entry of an order for the sale of shares under this subsection and provided that the corporation or the moving shareholders post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that the full purchase price of the shares, plus any additional costs, expenses, and fees as may be awarded, will be paid when due and payable, the selling shareholders shall no longer have any rights or status as shareholders, officers, or directors, except the right to receive the fair value of their shares plus such other amounts as may be awarded.
- 4-5. In determining whether to order equitable relief or dissolution, the court shall take into consideration the duty which all shareholders in a closely held corporation owe one another to act in an honest, fair, and reasonable manner in the operation of the corporation and the reasonable expectations of the shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other. For purposes of this section, any written agreement, including an employment agreement and a buy-sell agreement, between or among shareholders or between or among one or more shareholders and the corporation is presumed to reflect the parties' reasonable expectation concerning the matters dealt with in the agreement.
- 5-6. In deciding whether to order dissolution, the court shall consider whether lesser relief suggested by one or more parties, such as any form of equitable relief, a buyout, or a partial liquidation, would be adequate to permanently

relieve the circumstances established under subdivision b or c of subsection 1. Lesser relief may be ordered in any case when it would be appropriate under all the facts and circumstances of the case.

- 6-7. If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorney's fees and disbursements, to any of the other parties.
- 7-8. Proceedings under this section must be brought in a court within the county in which the principal executive office of the corporation is located. It is not necessary to make shareholders parties to the action or proceeding unless relief is sought against them personally.

SECTION 8. AMENDMENT. Subsection 2 of section 10-19.1-146 of the North Dakota Century Code is amended and reenacted as follows:

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection ~~5354~~ of section 10-19.1-01. If the corporation or foreign corporation is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or foreign corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

SECTION 9. AMENDMENT. Subsection 1 of section 10-32-07 of the North Dakota Century Code is amended and reenacted as follows:

1. The articles of organization must contain:
- a. The name of the limited liability company;
 - b. The name of the registered agent of the limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of such noncommercial registered agent in this state;
 - c. The address of the principal executive office;
 - d. The name and address of each organizer;
- ~~d-e.~~ The effective date of organization:
- (1) If a later date than that on which the certificate of organization is issued by the secretary of state; and
 - (2) Which may not be later than ninety days after the date on which the certificate of organization is issued; and
- e-f. If the articles of organization are filed with the secretary of state:
- (1) Before July 1, 1999, a statement stating in years that the period of existence for the limited liability company must be a period of thirty years from the date the articles of organization are filed with the secretary of state, unless the articles of organization expressly

authorize a shorter or longer period of duration, which may be perpetual.

- (2) After June 30, 1999, a statement stating in years the period of existence of the limited liability company, if other than perpetual.

SECTION 10. AMENDMENT. Section 10-32-14 of the North Dakota Century Code is amended and reenacted as follows:

10-32-14. Amendment of articles of organization.

The articles of organization of a limited liability company may be amended at any time to include or modify any provision that is required or permitted to appear in the articles or to omit any provision not required to be included in the articles, except that when articles are amended to restate them, the name and address of each organizer may be omitted. If only a change of address of the principal executive office is required, an amendment need not be filed; however, the change of address of the principal executive office must then be reported on the annual report filed after the change. Unless otherwise provided in this chapter, the articles may be amended or modified only in accordance with sections 10-32-14 through 10-32-18.

SECTION 11. AMENDMENT. Subsection 1 of section 10-33-06 of the North Dakota Century Code is amended and reenacted as follows:

1. The articles of incorporation must contain:
 - a. The name of the corporation;
 - b. The name of the registered agent of the corporation as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of that noncommercial registered agent in this state;
 - c. The address of the principal executive office:
 - d. The name and address of each incorporator;
- ~~d-e.~~ The effective date of the incorporation:
 - (1) If a later date than that on which the certificate of incorporation is issued by the secretary of state; and
 - (2) Which may not be later than ninety days after the date on which the certificate of incorporation is issued; and
- e-f. A statement that the corporation is incorporated under this chapter.

SECTION 12. AMENDMENT. Section 10-33-14 of the North Dakota Century Code is amended and reenacted as follows:

10-33-14. Amendment of articles.

The articles of a corporation may be amended at any time to include or modify any provision that is required or permitted to appear in the articles or to omit any provision not required to be included in the articles, except that when articles are amended to restate them, the name and address of each incorporator and each initial director may be omitted. If only a change of address of the principal executive office is

required, an amendment need not be filed; however, the change of address of the principal executive office must then be reported on the annual report filed after the change. Unless otherwise provided in this chapter, the articles may be amended or modified only in accordance with section 10-33-15.

SECTION 13. AMENDMENT. Subsection 3 of section 10-34-04 of the North Dakota Century Code is amended and reenacted as follows:

3. A domestic or foreign real estate investment trust shall register with the secretary of state by submitting an application signed by a trustee which includes:
 - a. The name of the real estate investment trust which may not be the same or deceptively similar to the name of any other real estate investment trust registered with the secretary of state, or any corporation, limited liability company, limited partnership, limited liability partnership, or any name that is in some manner reserved with the secretary of state, that is a fictitious trade name registered as provided in chapter 45-11, or that is a trade name registered as provided in chapter 47-25 unless there is filed with the secretary of state a written consent of the holder of the similar trade name to use the name proposed by the real estate investment trust. The name may not contain the word "corporation", "company", "incorporated", "limited liability company", or any abbreviation of these words.
 - b. The state and date of its formation.
 - c. The name, address, and principal place of business of each trustee and officer.
 - d. The name of its registered agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of that noncommercial registered agent in this state.
 - e. The address of the principal place of business.
 - f. A statement that the secretary of state is appointed the agent of the real estate investment trust for service of process as provided in section 10-01.1-13.

SECTION 14. AMENDMENT. Subsection 2 of section 10-35-28 of the North Dakota Century Code is amended and reenacted as follows:

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection 5254 of section 10-19.1-01, the articles or the bylaws, or by a resolution approved by the affirmative vote of the required proportion or number of the directors. If the publicly traded corporation is in the hands of a receiver or trustee, it must be signed on behalf of the publicly traded corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

Approved April 1, 2013
Filed April 1, 2013

CHAPTER 90

SENATE BILL NO. 2144

(Senators Laffen, Grindberg, Klein)
(Representatives Porter, Zaiser)

AN ACT to create and enact a new section to chapter 10-31 of the North Dakota Century Code, relating to ownership of professional organizations; and to amend and reenact sections 10-31-01, 10-31-02, 10-31-02.1, 10-31-04, and 10-31-13 of the North Dakota Century Code, relating to nonprofessional ownership of professional organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-31-01 of the North Dakota Century Code is amended and reenacted as follows:

10-31-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Create" means to form an organization by:
 - a. Incorporating a professional corporation;
 - b. Organizing a professional limited liability company; or
 - c. Registering a professional limited liability partnership.
2. "Executive" means an officer or a director of a professional corporation, a manager or a governor of a professional limited liability company, or a partner of a professional limited liability partnership.
3. "Foreign limited liability partnership" has the meaning set forth in section 45-22-01.
4. "Foreign professional organization" means a professional organization that is created under laws other than the laws of this state for purposes for which a professional organization may be created under this chapter.
5. "Minority owner" means an owner of a professional organization:
 - a. Who is not licensed or otherwise legally authorized within this state to render the same professional service as the organization;
 - b. Who provides a service to the organization which is ancillary to the organization's professional service;
 - c. Who does not provide that owner's service to the public through the organization; and
 - d. Who is expressly authorized under subsection 3 of section 10-31-04.

6. "Owner" means a shareholder of a professional corporation, a member of a professional limited liability company, or a partner of a limited liability partnership.
- 6-7. "Professional corporation" or "corporation" means a corporation that is incorporated under this chapter for the purpose of rendering professional service and which has as its shareholders only individuals;
- a. Individuals who themselves are licensed or otherwise legally authorized within this state to render the same professional service as the corporation ~~or nonlicensed~~;
 - b. Nonlicensed employees as provided in section 10-31-07.1; and
 - c. Minority owners.
- 7-8. "Professional limited liability company" or "limited liability company" means a limited liability company that is organized under this chapter for the purpose of rendering professional service and which has as its members only individuals;
- a. Individuals who themselves are licensed or otherwise legally authorized within this state to render the same professional service as the limited liability company ~~or nonlicensed~~;
 - b. Nonlicensed employees as provided in section 10-31-07.2; and
 - c. Minority owners.
- 8-9. "Professional limited liability partnership" or "limited liability partnership" means a limited liability partnership that is registered under this chapter for the purpose of rendering professional service, is not a foreign limited liability partnership, and has as its partners only individuals;
- a. Individuals who are licensed or otherwise legally authorized within this state to render the same professional service as the limited liability partnership ~~or nonlicensed~~;
 - b. Nonlicensed employees as provided in section 10-31-07.1; and
 - c. Minority owners.
- 9-10. "Professional organization" or "organization" means:
- a. A professional corporation that is incorporated under this chapter;
 - b. A professional limited liability company that is organized under this chapter; or
 - c. A professional limited liability partnership that is registered under this chapter.
- 10-11. "Professional service" means the personal service to the public which requires a license as a condition precedent to the rendering of such service and which requires as a condition of licensure an undergraduate or advanced college degree in the specific field.

SECTION 2. AMENDMENT. Section 10-31-02 of the North Dakota Century Code is amended and reenacted as follows:

10-31-02. Articles of incorporation.

1. One or more individuals may incorporate a professional organization in the form of a corporation for the practice of a profession by filing articles of incorporation with the secretary of state. The articles of incorporation must meet the requirements of chapter 10-19.1 and contain the following:
 - a. The profession to be practiced through the professional corporation; and
 - b. The names and residence addresses of all of the original shareholders of the professional corporation who will practice the profession in this state and of the original shareholders of the professional corporation who are minority owners.
2. At the time the articles of incorporation are filed with the secretary of state, the professional corporation also shall file a:
 - a. A certificate from the regulating board of the profession involved that each of the directors and shareholders of voting shares who will practice the profession in this state, if any, is licensed to practice the profession in this state; or
 - b. If there is one or more minority owners, a certificate from the regulating board of the profession of the corporation certifying that each of the directors and shareholders of voting shares who will practice the profession in this state, if any, is licensed to practice the profession in this state and a certificate from the corporation identifying the minority owners who are exempt from the licensing requirement and the express law authorizing minority ownership.

SECTION 3. AMENDMENT. Section 10-31-02.1 of the North Dakota Century Code is amended and reenacted as follows:

10-31-02.1. Articles of organization.

1. One or more individuals may organize a professional organization in the form of a limited liability company for the practice of a profession by filing articles of organization with the secretary of state. The articles of organization must meet the requirements of chapter 10-32 and must contain the following:
 - a. The profession to be practiced through the professional limited liability company; and
 - b. The name and residence address of each original member of the professional limited liability company who will practice the profession in this state and of each original member of the professional limited liability company who is a minority owner.
2. At the time the articles of organization are filed with the secretary of state, the professional limited liability company also shall file a:

- a. A certificate from the regulating board of the profession involved that each of the governors and members who will practice the profession in this state, if any, is licensed to practice the profession in this state; or
- b. If there is one or more minority owners, a certificate from the regulating board of the profession of the limited liability company certifying that each of the governors and members who will practice the profession in this state, if any, is licensed to practice the profession in this state and a certificate from the limited liability company identifying the minority owners and the express law authorizing minority ownership.

SECTION 4. AMENDMENT. Section 10-31-04 of the North Dakota Century Code is amended and reenacted as follows:

10-31-04. Purpose for which created - Minority ownership.

1. A professional organization may be created pursuant to this chapter only for the purpose of rendering one specific type of professional service and services ancillary thereto or for the purpose of rendering two or more kinds of professional services that are specifically authorized to be practiced in combination under the licensing laws of each of the professional services to be practiced by a licensed individual or partnership of licensed individuals and ancillary services. This subsection does not preclude an organization created pursuant to this chapter from rendering more than one specific type of professional service if the services rendered are set forth in chapters 43-03 and 43-19.1 or if the services rendered are set forth in chapters 43-26.1 and 43-40.
2. A professional organization may not engage in any business other than rendering the professional service for which it was created to render and services ancillary thereto ~~that professional service~~. However, a professional organization may own real and personal property necessary or appropriate for rendering the type of professional services it was created to render and may invest its funds in real estate mortgages, stocks, bonds, membership interests, and any other type of investment.
3. If expressly authorized under this subsection, a professional organization may have a minority ownership by one or more minority owners. A professional organization created under this chapter for the purpose of providing professional services as set forth in chapter 43-03 is expressly authorized to have minority owners.

SECTION 5. A new section to chapter 10-31 of the North Dakota Century Code is created and enacted as follows:

Issuance and transfer of shares, membership interests, and partnership interests - Exception for minority owners.

Notwithstanding sections 10-31-07, 10-31-07.2, and 10-31-07.3, if minority owners are expressly authorized under subsection 3 of section 10-31-04, a professional organization may issue shares and membership interests to minority members and an owner may transfer shares or membership interests to minority owners. In the case of issuance or transfer of shares or membership interests to a minority owner, the organization is exempt from the certificate filing requirement under sections 10-31-07, 10-31-07.2, and 10-31-07.3. However, if a professional organization has minority owners, an issuance or transfer of shares or membership

interests may not result in minority owners having a majority ownership in the organization.

³² **SECTION 6. AMENDMENT.** Section 10-31-13 of the North Dakota Century Code is amended and reenacted as follows:

10-31-13. Professional organizations - Annual reports - Renewal.

1. With respect to a professional organization in the form of a corporation:
 - a. Each corporation incorporated under this chapter shall file with the secretary of state an annual report at the time specified for the filing of the report by chapter 10-19.1 giving the name and residence address of each officer, director, and shareholder of the corporation at the time of filing of the report. With respect to shares, the report must include:
 - (1) A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class; and
 - (2) A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class; and
 - (3) If there are minority owners, a statement of the issued shares, itemized by minority owner and nonminority owner.
 - b. ~~The~~Except as provided under subsection 4, the report must include a statement that all directors and shareholders of voting shares who practice in this state are licensed to render the same specific professional services as those for which the corporation was incorporated. The report must be:
 - (1) Made on a form as prescribed and furnished by the secretary of state;
 - (2) Signed by the president or vice president of the corporation; and
 - (3) Accompanied by the filing fee prescribed in chapter 10-19.1.
 - c. A copy of the report must be filed at the same time with the regulatory board that licenses the shareholders ~~described in the report~~providing the corporation's professional service. No filing fee may be charged by the ~~The~~ regulatory board may not charge a filing fee.
 - d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulating board.
2. With respect to a professional organization in the form of a limited liability company:

³² Section 10-31-13 was also amended by section 2 of Senate Bill No. 2152, chapter 91.

- a. Each limited liability company organized under this chapter shall file with the secretary of state an annual report at the time specified for the filing of the report by chapter 10-32 giving the name and residence address of all managers, governors, and members of the organization at the time of filing of the annual report.
 - b. ~~The~~Except as provided under subsection 4, the report must include a statement that all governors and members holding voting membership interests who practice in this state are licensed to render the same specific professional services as those for which the limited liability company was organized. This report must be:
 - (1) Made on a form as prescribed and furnished by the secretary of state;
 - (2) Signed by the president or vice president of the limited liability company; and
 - (3) Accompanied by the filing fee prescribed in section 10-32-180.
 - c. A copy of the report must be filed at the same time with the regulatory board that licenses the members ~~described in the report~~providing the limited liability company's professional service. ~~No filing fee may be charged by the~~The regulatory board may not charge a filing fee.
 - d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulatory board.
3. With respect to a professional organization in the form of a limited liability partnership:
- a. The annual report filed with the secretary of state at the time specified for the filing of the report by chapter 45-22 must include the name and residence address of each partner of the organization at the time of filing of the annual report.
 - b. ~~The~~Except as provided under subsection 4, the annual report must include a statement that each partner holding voting partnership interests who practices in this state is licensed to render the same specific professional services as those for which the limited liability partnership was registered. The annual report must be:
 - (1) Made on a form prescribed and furnished by the secretary of state;
 - (2) Signed by a managing partner of the limited liability partnership; and
 - (3) Accompanied by the filing fee prescribed in section 45-22-22.
 - c. A copy of the annual report must be filed at the same time with the regulatory board that licenses the partners ~~described in the annual report~~providing the limited liability partnership's professional service. ~~A filing fee may not be charged by the~~The regulatory board may not charge a filing fee.

- d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not exceeding twenty dollars per individual certified to be licensed by the regulating board.
4. If the organization has a minority owner, the annual report must include a statement that:
 - a. Each nonminority owner who practices in this state is licensed to render the organization's professional service;
 - b. Each minority owner provides a service to the organization which is ancillary to the organization's professional service;
 - c. Each minority owner does not provide that owner's service to the public through the organization; and
 - d. The minority owners do not hold a majority interest in the organization.
 5. In order to regulate organizations that have minority ownership, the secretary of state shall collect one thousand dollars for articles of incorporation for a corporation, articles of organization for a limited liability company, or articles of amendment related to an organization that has a minority owner. This fee is in addition to the fees provided for these filings under section 10-19.1-147 or 10-32-150. Fees collected by the secretary of state under this subsection must be deposited in the secretary of state's general services operating fund.

Approved April 24, 2013
Filed April 24, 2013

CHAPTER 91

SENATE BILL NO. 2152

(Senators Sitte, Campbell, Laffen)
(Representatives Karls, K. Koppelman, Mooney)

AN ACT to create and enact a new subsection to section 10-31-13 of the North Dakota Century Code, relating to regulation of professional organizations; and to amend and reenact section 10-31-06 of the North Dakota Century Code, relating to ownership of professional organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-31-06 of the North Dakota Century Code is amended and reenacted as follows:

10-31-06. Executives and owners.

1. ~~No~~An individual may ~~be not~~ simultaneously be an executive or owner of more than one professional organization rendering the same professional service.
2. A professional organization in the form of a corporation which has only one shareholder need have only one director, who must be the shareholder. That individual also shall serve as the president and treasurer of the corporation. The other officers of the corporation need not be licensed or otherwise legally authorized in the same field of endeavor as the president.
3. A retired individual may not continue as an executive or owner of a professional organization.

³³ **SECTION 2.** A new subsection to section 10-31-13 of the North Dakota Century Code is created and enacted as follows:

In order to regulate organizations that have ownership that renders more than one professional service, the secretary of state shall collect one thousand dollars for articles of incorporation for a corporation, articles of organization for a limited liability company, or articles of amendment related to an organization that has ownership that renders more than one professional service. This fee is in addition to the fees provided for these filings under section 10-19.1-147 or 10-32-150. Fees collected by the secretary of state under this subsection must be deposited in the secretary of state's general services operating fund.

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Filed April 24, 2013

³³ Section 10-31-13 was also amended by section 6 of Senate Bill No. 2144, chapter 90.