

**New York State Bar Association  
Proposed Revision of the  
New York Not-for-Profit Corporation Law  
May 2007**

**Introduction**

The Corporation Law Committee (the “Committee”) of the New York State Bar Association (“NYSBA”) has initiated a process of review and proposed revision of the New York Not-for-Profit Corporation Law (the “N-PCL”). Initially undertaken to conform the N-PCL to the current Business Corporation Law in New York, this process presents an opportunity to revisit and improve selected provisions of the N-PCL, especially in light of the dramatic changes in corporate governance throughout the sector in response to the Sarbanes-Oxley Act.<sup>1</sup> The Committee’s analysis, in consultation with other experts, has resulted in a comprehensive draft revision of the N-PCL, a statute that has not seen extensive revision since its adoption over three decades ago.

The non-profit sector in New York State is enormous and wide-ranging – foundations and charities, health care organizations, service agencies, clubs and neighborhood groups, cultural institutions, religious organizations, research and educational centers, chambers of commerce, economic development corporations, and more. The impact of the sector and even certain of the entities within it is vital to the people and economy of the State of New York.<sup>2</sup> The Committee has benefitted from the expertise of the many and varied parties engaged with the N-PCL – non-profit directors, officers, and employees; lawyers and other professionals who advise non-profit corporations; interested committees of the organized bar; government officials, including legislators, the office of the state Attorney General, and the office of the Secretary of State; and commentators and scholars.

The Committee’s goal was to produce a revised statute that best serves the public interest and the New York non-profit sector. The draft revision compares favorably with comparable laws in other states and, if enacted, will substantially reduce current incentives for organizations in New York State to incorporate or move investment assets out of state, reduce government burdens, and streamline non-profit governance without compromising oversight. The Committee’s ongoing consultations with respect to concurrent drafting initiatives – including work on the American Bar Association’s Revised Model Nonprofit Corporation Act and the

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<sup>1</sup> The American Competitiveness and Corporate Accountability Act of 2002, commonly known as the “Sarbanes-Oxley Act.” While the Sarbanes-Oxley Act by its terms is largely applicable to public-traded companies and only has two provisions directly applicable to entities governed by the N-PCL, see “The Sarbanes-Oxley Act and Implications for Nonprofit Organizations,” January 2006 at [www.boardsource.org/clientfiles/sarbanes-oxley.pdf](http://www.boardsource.org/clientfiles/sarbanes-oxley.pdf).

<sup>2</sup> See *Spitzer v. Grasso*, Supreme Court of New York, New York County, No. 401620/04, 3/15/06 (acknowledging the impact of the NYSE is so great as to permit the application of the doctrine of *parens patriae* by the Charities Bureau).

American Law Institute's Project on Principles of the Law of Nonprofit Corporations – further assure that New York's revised N-PCL will reflect best practices nationally.

Attached hereto is a copy of the NYSBA's draft revision of the N-PCL – a redlined version of the current N-PCL, with proposed additions underlined and proposed deletions crossed out.

## **Executive Summary**

The NYSBA seeks a more consistent statutory framework for non-profit corporations and business corporations in New York State. Such symmetry will simplify the practice and interpretation of corporate law in the state, particularly given the significant and growing overlap of non-profit and business law practice. Substantial revision of the New York Business Corporation Law (the "BCL") in recent years has not been accompanied by parallel changes to the N-PCL. These N-PCL draft revisions conform where appropriate to the BCL, including parallel articles and section numbers as well as similar language in parallel provisions. Beyond conforming the N-PCL to the BCL, the draft revisions reflect an effort to reduce excessive barriers to formation and operation of not-for-profit corporations in New York, while maintaining sufficient government oversight and emphasizing the fiduciary responsibilities of directors and officers. These proposed changes are the product of a generation's worth of learning since the enactment of the original statute. For example, unlike non-profit corporation statutes in most other states, New York's N-PCL requires incorporators to obtain advance approvals from various state agencies as a condition of incorporation. This denies organizations the opportunity to conduct planning and seek crucial federal recognition of tax-exempt status while simultaneously securing state regulatory approval to operate. A more streamlined approach, commonly used throughout the U.S., is recommended by which incorporation can occur but regulated activities cannot be conducted until appropriate licensure is obtained. Other changes with respect to dissolutions of not-for profit corporations have largely already been incorporated by recent changes to the N-PCL – an indication of the recognized need to modernize the statute without compromising the public interest.

The draft revisions eliminate many of the idiosyncratic provisions unique to New York law, created at a time when the law in the field was not as well developed and the legislature was grappling with amalgamating various model acts and the recently adopted BCL into a single statute. In particular, the draft revisions eliminate the designation of statutory "Types" of not-for-profit corporations. The N-PCL definitions of four types – A, B, C or D – create undue complexity in formation and ambiguity at the borders between Types, disguise the impact of the common and statutory law on charitable funds managed by corporations, and provide potential dissonance with federal Internal Revenue Code ("IRC") categories for tax exemption.

Elimination of Types would result in consistent statutory rules for all non-profit corporations incorporated in New York, with targeted protections for continued use of donor-restricted and charitable funds for their intended purposes, a refinement that recognizes recent

enforcement actions by the Attorney General Charities Bureau and its important oversight role in this area.

The Committee has given careful consideration to and received valuable inputs with respect to the possible incorporation of various aspects of the Sarbanes-Oxley Act into the N-PCL.<sup>3</sup> The consideration of these elements – required executive and audit committees; adoption of a code of ethics; whistleblower and document retention/destruction policies; verification or certification of financial statements and other filings; auditor independence standards; and so on – has resulted in a varied and vigorous debate in the non-profit and charitable communities nationwide. The Committee, while sensitive to the importance of transparency and protections against wrongdoing among not-for-profit corporation boards and executives, has not incorporated these elements into the draft revisions. Instead, the Committee has deferred to the approach taken by the Attorney General Charities Bureau,<sup>4</sup> and relied upon individual corporations to consider and adopt appropriate measures, consonant with industry practice and their obligations to meet the standard of care imposed by N-PCL Section 717. The Committee expects (and invites) continued consideration of this approach as various constituencies around the State comment on the draft revisions.

Finally, the NYSBA recommends changing the title of the statute to the “Non-Profit Corporation Law,” adjusting the reference to “NPCL.” The current title – “*Not-for-Profit Corporation Law*” [italics added] – was intended originally to clarify that a corporation organized under this statute is permitted to make a “profit” within the limitations of the statute. That principle of law has come to be widely and well understood, without regard to the title of the statute. Indeed, the nomenclature is unique to New York – another distinction which no longer makes a difference and causes confusion even within New York but also, certainly, as New York corporations deal with others around the country. Today, in New York and elsewhere, numerous non-profit corporations engage in commercial activity within the limits of state and federal law, making net revenues in some instances but adhering to the prohibition on distributing profit. Changing the title of the N-PCL to the Non-Profit Corporation Law will provide for more succinct and understandable terminology and will put New York in step with the doctrinal norm.

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<sup>3</sup> Several of our Committee members are also serving on the committee charged with addressing these issues on behalf of the NYSBA for its own governance.

<sup>4</sup> On January 23, 2003, Attorney General Eliot Spitzer publicly proposed a version of the federal Sarbanes-Oxley law to be applicable to New York’s non-profits. Thereafter followed new accounting reform regulations affecting charities operating in New York, [see www.oag.state.ny.us/charities/charities.html](http://www.oag.state.ny.us/charities/charities.html), and extensive comment on the legislative proposal by several advocacy groups in the State, including the Non-profit Coordinating Committee of New York City, [see http://www.nppccny.org/info/gti10.htm](http://www.nppccny.org/info/gti10.htm). The proposal ultimately failed to get passed, and in late 2004 the Charities Bureau decided not to pursue its earlier approach, preferring to publicize the Bureau’s efforts for “educating directors and officers of not-for-profit corporations rather than imposing new laws.” [See www.legislativegazette.com/read\\_more.php?story=325](http://www.legislativegazette.com/read_more.php?story=325). The use of the very term “Sarbanes-Oxley” has fallen into disfavor, with a renewed emphasis on corporate governance practices.” [See “Panel Says Sarbanes-Oxley May Be Too Difficult for Not-for-Profits to Implement, But Certain Aspects May Be Beneficial,” http://w4.stern.nyu.edu/news/news.cfm?doc\\_id=5187](http://w4.stern.nyu.edu/news/news.cfm?doc_id=5187). Reaction to California’s recently enacted legislation, The California Nonprofit Integrity Act of 2004, is still developing.

### **Outline of Proposed Changes**

Following is an outline of selected revisions to the N-PCL proposed by the Committee. This outline focuses on substantive changes rather than amendments simply designed to conform to the BCL. The outline tracks the fifteen Articles of the statute, summarizing proposals for significant changes in the first ten Articles.

#### ***Article 1 – Short title; Definitions; Application; Certificates; Miscellaneous.***

The title of the statute is changed from “Not-for-Profit Corporation Law” to “Non-Profit Corporation Law,” and shorthand citation is changed from “N-PCL” to “NPCL” [section 101]. References to the Not-for-Profit Corporation Law or to not-for-profit corporations are accordingly amended to reference the Non-Profit Corporation Law or non-profit corporations throughout the statute [Chapter heading, and sections 102(a); 103; 202; 305(c); 402; 501; 503(c); 512; 804; 805; 807; 904; 906(d); 908; 910; 1003; 1304; 1309; 1310; 1311; Article 14 heading; 1401; 1411; 1412; 1406-a].

Revisions to Article 1 foreshadow substantive changes in Articles 2 and 4. In particular, references to “Types” are eliminated [sections 103, 112-115]. Definitions [section 102] are renumbered in alphabetical order. Three new definitions are added -- “assets received for specific purposes,” “charitable purposes,” and “organized for charitable purposes.” Use of these terms throughout the statute is designed to maintain clarity with respect to Attorney General and judicial oversight in the absence of Types, focusing on the key elements for government oversight: the presence of charitable purposes and assets raised for specific purposes. The revised draft maintains judicial authority to intervene in the event of misappropriation of corporate funds [section 114. “Visitation of supreme court”], but makes the provision applicable to all not-for-profit corporations rather than only Types B and C corporations, an appropriate broadening of oversight.

“Assets received for specific purposes” is a term adapted from current section 513. It encompasses donor-restricted funds as well as funds resulting from institutional solicitations for designated uses. Subsequent provisions focus Attorney General and judicial oversight on protection of such assets and their continued use for intended purposes. The intent is to codify the developing practice within the State and recognized by the courts<sup>5</sup> that the directors or trustees of a charitable corporation owe a duty of obedience to the corporate purposes of the entity, assuring that assets received to advance those purposes are not diverted without proper consent or court approval.

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<sup>5</sup> See Matter of Manhattan Eye, Ear & Throat Hosp. v Spitzer, 186 Misc 2d 126 (Sup Ct, NY County 1999).

Requirements associated with agency approvals prior to Secretary of State filing of certificates of incorporation are eliminated [section 104]. The new provision would maintain and facilitate regulatory authority in the absence of agency approvals. First, new statutory language [section 103-A] expressly provides that incorporation under this statute does *not* exempt an entity from requirements of *any* regulatory law and does not authorize any entity to do anything prohibited by law or regulation. The intent is to mirror the approach in other jurisdictions and provide the new corporation the opportunity to secure IRS recognition of tax-exempt status and engage in critical planning and organizational activities while also preserving the dominance of any state regulatory regimen with respect to activities subject to licensing requirements.

### ***Article 2 – Corporate Purposes and Powers.***

The primary change to Article 2 is the elimination of Types A, B, C, and D. Thus definitions of Types and distinctions between Types are also eliminated [section 201]. The provision is amended to prohibit any non-profit corporation from conducting activities for pecuniary profit or financial gain, except to support its other lawful activities, essentially importing current section 204 into revised section 201.

The explicit power to establish conditions and requirements for membership is added [section 202], foreshadowing clarification in Article 6 of membership criteria and procedures. Provisions for dollar-limits associated with income-producing real estate [section 202] and restricted transfer of real property to a member of the corporation [section 205] are deleted. References to subventions and capital contributions also are deleted [section 202].

### ***Article 3 – Corporate Name and Service of Process.***

Modest revisions are proposed for Article 3. The most significant change [section 301] would expand the options for required terms in the name of a not-for-profit corporation. Currently, a corporate name must include the word (or abbreviation of) “corporation,” “incorporated,” or “limited”; the draft revision adds “association,” “club,” “foundation,” “fund,” “institute,” “union” or “society” to the list.

### ***Article 4 – Formation of Corporations.***

Article 4 is revised to eliminate the requirement to include designation of Type A, B, C, or D in the contents of the certificate of incorporation of a not-for-profit corporation. The revisions further eliminate the need to list names and addresses of initial directors in the certificate [section 402]. Conforming with BCL section 402(b), which is now a well-accepted form of director protection, the revised Article 4 would allow the certificate to limit personal liability of directors to the corporation or its members - although not to third parties - for certain breaches of duty. [section 402]. This limitation of liability will not protect a director whose conduct involved bad faith, intentional misconduct, knowing violations of law or receipt of an improper financial gain or other advantage.

The revised Article 4 also streamlines the approval process for incorporation [section 404]. Under current law, prior to submitting a certificate of incorporation to the Secretary of State, not-for-profit incorporators in New York must first obtain written approval or consent from any other state agency with jurisdiction over activity the corporation might eventually undertake pursuant to its stated purposes. Such approval is required even if the corporation is formed in order to conduct preliminary planning, fundraising, and organizational activity short of the substantive operation that ultimately would be subject to state regulation or licensing; and, this agency approval requirement is triggered by purposes stated in the certificate of incorporation, whether or not the corporation ever operates in furtherance of such purposes. State agency oversight is protected through the requirement that the new corporation provide a certified copy of the filed certificate of incorporation to the applicable state agency following incorporation.

Accompanying this shift from agency approval to Secretary of State notice is a provision [section 404] echoing the new section 103-A, i.e., further reinforcing the regulatory application of other laws and affirming the authority of any governmental body to require a corporation to obtain a license or permit legally required for conduct of specific activities.

#### ***Article 5 – Corporate Finance.***

Revisions to Article 5 simplify the framework for capital structure of not-for-profit corporations by eliminating the “subvention,” a subordinated debt instrument unique to New York law [sections 504-505]. Although the Committee expresses no principled opposition to subventions, it assumes that use of more conventional subordinated debt instruments such as promissory notes is adequate, less complex, and more consistent with the capital structure of non-profit corporations in other states. This change, if enacted, would require a mechanism to account for subventions previously authorized and outstanding.

Also in Article 5, provisions for relative rights, preferences, and limitations of capital certificates are clarified in conformance with the BCL [section 502]. Issuance of transferable membership certificates [section 501] or capital certificates [section 502] would be permitted, if so authorized in the certificate of incorporation or bylaws.

In Sections 510 and 511, judicial approval is required with respect to applicable asset transactions by corporations formed for charitable purposes or corporations that hold restricted assets. These provisions reflect appropriate oversight of both charitable organizations and restricted assets. Government oversight is broadened over current law in that transactions by a corporation without charitable purposes would be subject to judicial approval if the corporation also holds restricted assets, which is an appropriate method to assure that restricted assets are not endangered by the larger asset transaction. An exception is added for transfers to constituent charitable corporations, i.e. to charitable corporations controlled by or under common control with the selling corporation.

Failure of the corporation to file required reports would subject the corporation to an order of the Attorney General compelling such report(s) to be filed within 60 days of such order [section 520]. Continued noncompliance following the 60-day period would give rise to potential further action by the Attorney General for judicial dissolution pursuant to Article 11. Greater focus on enforcing current law appears to the Committee as a more efficient route than the heightened standards for annual reporting by corporate officers reflected in numerous legislative proposals since January 23, 2003,<sup>6</sup> though the two are not incompatible.

Article 5 contains several provisions arising out of New York's adoption of its version of the Uniform Management of Institutional Funds Act ("UMIFA") back in 1978. UMIFA, like the N-PCL, is poorly suited to serve the non-profit and especially the charitable sector after decades of development, and a successor act, the Uniform Prudent Management of Institutional Funds Act ("UPMIFA"), had been proposed. At this early juncture, while the Committee has several suggestions on how to improve the N-PCL in this regard, to do so in light of the developments of UPMIFA would be premature. Continued attention will need to be paid to this subject, given the continued large concentration of investment assets within New York non-profits and the challenges posed by imaginative investment vehicles.

#### ***Article 6 – Members.***

Revisions to Article 6 enable *any* New York not-for-profit corporation to designate itself as a membership *or* a non-membership organization. (Under current law, Type B corporations may have members or not, but other Types must have members.) A corporation with more than one class of members must designate its multiple classes of members in the certificate of incorporation [section 601]. Revisions further clarify the designation of events constituting membership termination.

The Article 6 revisions also clarify procedures for member meetings, meeting notices, rights of inspection, voting on bylaw amendments, and other decision-making by the board or the members [sections 602-603, 605-606, 610-611, 614, 621].

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<sup>6</sup> See, e.g., Senate Bill S05237 (Leibell - at request of Attorney General) / Assembly Bill A07824 (Brotsky-at request of Department of Law) (governing the activities of interested directors and officers; providing additional protections against financial fraud and other abuses by the officers of not-for-profit corporations; prohibiting self-dealing between an officer or director and such corporation in certain cases); Senate Bill S05235 (Leibell at request of Attorney General) / Assembly Bill A07825 (Brotsky-at request of Department of Law) (providing additional protections against financial fraud and other abuses by the officers of not-for-profit corporations; prohibiting self-dealing between an officer or director and such corporation in certain cases).

### ***Article 7 – Directors and Officers.***

Revisions to Article 7 maintain the current requirement that a not-for-profit corporation have at least three directors [section 102]. With respect to officers, however, it would allow one person to hold all or any combination of the offices of president, secretary, or treasurer in a one-member not-for-profit corporation [section 713].

The draft revision deletes the “special committees” provisions contained in paragraph (c). Those provisions have provoked considerable confusion among organizations, including whether a special committee must be composed exclusively of directors. The draft also, consistently, deletes reference to “standing” committees. The revised section will authorize committees of the board composed of three or more directors and committees “of the corporation” that need not be composed of directors. These revisions make this section consistent with the parallel section in the Business Corporation Law.

The draft revisions implicate fiduciary duties of directors and officers [section 717] with language parallel to BCL section 717(b). This provision enables directors to consider the interests of a range of stakeholder interests in the context of a potential change in control of the corporation. A provision [section 720-a] imported from BCL section 402(b) allows the certificate of incorporation to limit certain liability of a director to the corporation or its members, providing further incentive to attract non-profit corporation directors. This provision does not allow for limiting liability to third parties, nor does it apply in the event of misconduct or undue personal gain by the director.

With respect to corporate transactions with interested directors, the Committee notes that current law requires transactions to be fair or to be approved by disinterested directors. Many non-profit corporations rely on beneficial business relationships with directors, and the N-PCL [section 715] sets adequate bounds without discouraging such relationships. No further restrictions appear necessary, especially given Attorney General authority currently for action against interested directors pursuant to Article 7 and Internal Revenue Service authority to enforce related restrictions under IRC section 4958.

### ***Article 8 – Amendments and Changes.***

Similar to Article 4 changes with respect to incorporation, the revisions to Article 8 eliminate references to Types and, more notably, requirements of state agency approvals prior to filing certificates of amendment by the Secretary of State [section 804]. This change recognizes the reality that the conditions that society expects non-profit organizations to address can and do evolve rapidly, yet the limitations and delays inherent in existing law on corporations’ ability to update their corporate purposes impede them from fully benefitting society.

New language [section 801] provides that no amendment to a certificate of incorporation can enable use of any assets received for specific purposes in a manner inconsistent with such purposes. A new provision [new section 806(d)] provides that amendment of purposes would



not prevent a corporation from applying assets acquired prior to such amendment to such amended purposes, provided that the corporation abides by any gift instrument for assets received for specific purposes prior to such amendment. By those provisions, a corporation's ability to efficiently update its purposes will not conflict with legal restrictions on then-existing assets.

Modest changes also clarify the relative authority of the members and the board of directors with respect to voting on amendments to the certificate of incorporation or bylaws [sections 802-803]. Judicial approval of certificates of amendment would not be required [new section 806; formerly section 804], provided that corporate assets will continue to be used for the specific purposes for which funds were given to the corporation [section 801]. This provision conforms to recent repeal of parallel judicial approval provisions in Article 4 governing formation of Types B and C corporations.

#### ***Article 9 – Merger or Consolidation.***

References to Types are deleted from Article 9 [section 908]. Further revisions to Article 9 add the power of a New York not-for-profit corporation to merge, not simply with another New York not-for-profit corporation, but also with a non-profit corporation in a different state [section 901].

Procedures for merger plan approval are clarified [section 903]. Merger of any corporation that is organized for charitable purposes and that holds assets received for specific purposes must be approved by the supreme court [section 907], with opportunity for appearance and objection to the plan by the Attorney General [section 907(b)]. Following such approval, the corporation must submit a certificate of merger to the Secretary of State, who in turn notifies state agencies with oversight of any of the corporation's purposes. Any assets received for specific purposes prior to the merger will retain such designation of use after the merger, except as otherwise directed by the supreme court that approves the merger [section 905]. Criteria for judicial approval are narrowed to focus upon use of assets in accordance with specific purposes for which such assets were received [section 907].

#### ***Article 10 – Non-Judicial Dissolution.***

Revisions to Article 10 require approval of the Supreme Court for dissolution of any corporation that is organized for charitable purposes or that holds assets received for specific purposes (rather than applying to Types B and C corporations) [sections 1001, 1003], with opportunity for appearance and objection to the plan by the Attorney General [section 1003]. As with the changes to Sections 510 and 511, these changes reflect the appropriate exercise of government oversight over charitable organizations and any non-profit organization holding restricted assets.

Following any such judicial approval, a corporation would be required to submit a certificate of dissolution to the Secretary of State who in turn would notify state agencies related

to any of the corporation's purposes. Decision-making procedures with respect to dissolution are clarified [section 1002].

Procedures after dissolution are focused upon winding up corporate affairs and assuring use of assets received for specific purposes for such purposes [section 1005]. Provisions for revocation or annulment of voluntary dissolution proceedings are deleted [sections 1010, 1012].

***Article 11 – et. seq.***

The NYSBA has drafted no significant amendments to:

*Article 11 – Judicial Dissolution.*

*Article 12 – Receivership.*

*Article 13 – Foreign Corporations.*

*Article 14 – Special Not-for-Profit Corporations.*

*Article 15 – Public Cemetery Corporations.*

\*\*\* THIS SECTION IS CURRENT THROUGH CH. 104, also incorporating A.9462, A.10652-A,  
S.6460-C (Legislative overrides of Governor's veto) 06/19/2006 \*\*\*  
\*\*\* WITH THE EXCEPTION OF CHS. 2, 3, 36, 37, 48, 49, 62 and 99-103 \*\*\*

NON-PROFIT CORPORATION LAW

ARTICLE 1. SHORT TITLE; DEFINITIONS; APPLICATION; CERTIFICATES;  
MISCELLANEOUS

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NY CLS N-PCL § 101 (2006)

§ 101. Short title

This chapter shall be known as the "Non-Profit Corporation Law" and may be cited as "NPCL".

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NY CLS N-PCL § 102 (2006)

§ 102. Definitions

(a) As used in this chapter, unless the context otherwise requires, the term:

(1) "Assets received for specific purposes" means funds or other real or personal property of any kind, that may be given, granted, bequeathed or devised to or otherwise vested in a corporation in trust for, or with a direction to apply the same to, any particular purpose.

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(2) "Authorized person" means a person, whether or not a member, officer, or director, who is authorized to act on behalf of a corporation or foreign corporation.

(3) "Bonds" includes secured and unsecured bonds, debentures, and notes.

(4) "By-laws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

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(5) "Certificate of incorporation" includes (A) the original certificate of incorporation or any other instrument filed or issued under any statute to form a domestic or foreign corporation, as amended, supplemented or restated by certificates of amendment, merger or consolidation or other certificates or instruments filed or issued under any statute; or (B) a special act or charter creating a domestic or foreign corporation, as amended, supplemented or restated.

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(6) "Charitable purposes" of a corporation means purposes contained in the certificate of incorporation of the corporation that are charitable, educational, religious, scientific, literary, cultural or for the prevention of cruelty to children or animals. (7) "Conducting of activities" of a corporation means the operations for the conduct of which such corporation is formed and may constitute "doing of business" or "transaction of business" as those terms are used in the statutes of this state.

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(8) "Corporation" or "domestic corporation" means a corporation (1) formed under this chapter, or existing on its effective date and theretofore formed under any other general statute or by any special act of this state, exclusively for a purpose or purposes, not for pecuniary profit or financial gain, for which a corporation may be formed under this chapter, and (2) no part of the assets, income or profit of which is distributable to, or enures to the benefit of, its members, directors or officers except to the extent permitted under this statute.

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(9) "Director" means any member of the governing board of a corporation, whether designated as director, trustee, manager, governor, or by any other title. The term "board" means "board of directors".

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(10) "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the corporation on a current basis under the specific terms of all applicable gift instruments.

(11) "Foreign corporation" means a corporation formed under laws other than the statutes of this state, which, if formed under the statutes of this state, would be within the term "corporation or domestic corporation" as herein defined. "Authorized", when used with respect to a foreign corporation, means having authority under Article 13 (Foreign Corporations) to conduct activities of the corporation in this state.

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(12) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, court order, writing or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or acquired by a corporation as an institutional fund.

(13) "Governing board" means the body responsible for the management of a corporation or of an institutional fund.

(14) "Historic dollar value" means the aggregate fair value in dollars of (i) an endowment fund at the time it became an endowment fund, (ii) each subsequent donation to the fund at the time it is made, and (iii) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the corporation is conclusive. (15) "Infant" or "minor" means any person who has not attained the age of eighteen years.

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(16) "Insolvent" means being unable to pay debts as they become due in the usual course of the debtor's business.

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(17) "Institutional fund" means a fund for the exclusive use, benefit or purposes of a corporation, held either by the corporation itself or on behalf of the corporation by a person or entity whose sole authority with respect to the fund has been delegated by the corporation pursuant to section 511 (Delegation of investment management), but does not include (i) a fund held for a corporation by a trustee that is not a non-profit corporation (other than a trustee whose sole authority with respect to the fund has been delegated by the corporation pursuant to section 511), or (ii) a fund in which a beneficiary that is not a non-profit corporation has an interest (other than possible rights that could arise upon violation or failure of the purposes of the fund).

(18) "Member" means one having membership rights in a corporation in accordance with the provisions of its certificate of incorporation or by-laws.

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(19) "Non-profit corporation" means a corporation as defined in subparagraph (8).

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(20) "Office of a corporation" means the office the location of which is stated in the certificate of incorporation of a domestic corporation, or in the application for authority of a foreign corporation or an amendment thereof. Such office need not be a place where activities are conducted by such corporation.

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(21) "Organized for charitable purposes means that the corporation's certificate of incorporation contains charitable purposes."

(22) "Process" means judicial process and all orders, demands, notices or other papers required or permitted by law to be personally served on a domestic or foreign corporation, for the purpose of acquiring jurisdiction of such corporation in any action or proceeding, civil or criminal, whether judicial, administrative, arbitrate or otherwise, in this state or in the federal courts sitting in or for this state.

(23) [Eff April 9, 2006] "Person" means any association, corporation, joint stock company, estate, general partnership (including any registered limited liability partnership or foreign limited liability partnership), limited association, limited liability company (including a professional service limited liability company), foreign limited liability company (including a foreign professional service limited liability company), joint venture, limited partnership, natural person, real estate investment trust, business trust or other trust, custodian, nominee or any other individual or entity in its own or any representative capacity. [The following deleted definitions are simply moved into alphabetical order]

*NY CLS N-PCL § 103 (2006)*

§ 103. Application

(a) Except as otherwise provided in this section, this chapter applies to every domestic corporation as herein defined, and to every foreign corporation as herein defined which is authorized to conduct or which conducts any activities in this state. This chapter also applies to any other domestic corporation or foreign corporation of any type or kind to the extent, if any, provided under this chapter or any law governing such corporation and, if no such provision for application is made, to the extent, if any, that the membership corporations law applied to such corporation as of the effective date of this chapter. A corporation formed by a special act of this state which has as its principal purpose an education purpose and which is a member of the university of the state of New York, is an "education corporation" under section two hundred sixteen-a of the education law.

To the extent that the membership corporations law or the general corporation law applied to it as of the effective date of this chapter, the corresponding provisions of this chapter apply to a corporation heretofore formed by or pursuant to a special act of this state other than a religious corporation or an "education corporation" under clause (b) of subdivision one of section two hundred sixteen-a of the education law, if (1) its principal purpose is a religious, charitable or education purpose, and (2) it is operated, supervised or controlled by or in connection with a religious organization. This chapter shall apply in all respects to any corporation that heretofore filed a certificate of type with the department of state under section one hundred thirteen (Certificate of type of not-for-profit corporation) [repealed].

This chapter also applies to any other corporation of any type or kind, formed not for profit under any other chapter of the laws of this state except a chapter of the consolidated laws, to the extent that provisions of this chapter do not conflict with the provisions of such unconsolidated law. If an

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Deleted: "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the corporation on a current basis under the specific terms of all applicable gift instruments.¶ (14)

Deleted: "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, court order, writing or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or acquired by a corporation as an institutional fund.¶

(15) "Governing board" means the body responsible for the management of a corporation or of an institutional fund.

Deleted: (16) "Historic dollar value" means the aggregate fair value in dollars of (i) an endowment fund at the time it became an endowment fund, (ii) each subsequent donation to the fund at the time it is made, and (iii) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the corporation is conclusive.¶

(17) "Institutional fund" means a fund for the exclusive use, benefit or purposes of a corporation, held either by the corporation itself or on behalf of the corporation by a person or entity whose sole authority with respect to the fund has been delegated by the corporation pursuant to section 514 (Delegation of investment management), but does not include (i) a fund held for a corporation by a trustee that is not a not-for-profit corporation (other than a trustee whose sole authority with respect to the fund has been d ... [1]

Deleted: (18) "Authorized person" means a person, whether or not a member, officer, or director, who is authorized to act on behalf of a corporation or foreign corporation.¶ (19) [Eff April 9, 2006] "Person" ... [2]

Deleted: Any such corporation may elect hereunder at any time after the effective date of this chapter to file a certificate of type under section one hundred thirteen

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Deleted: Upon the filing of such certificate by [with] [n1] the department of state, this chapter shall apply in all respects to such corporation.¶

applicable provision of such unconsolidated law relates to a matter embraced in this chapter but is not in conflict therewith, both provisions shall apply. Any corporation to which this chapter is made applicable by this paragraph shall be treated as a "corporation" or "domestic corporation" as such terms are used in this chapter, except that the purposes of any such corporation formed or formable under such unconsolidated law shall not thereby be extended. For the purpose of this paragraph, the effective date of this chapter as to corporations to which this chapter is made applicable by this paragraph shall be September one, nineteen hundred seventy-three.

(b) The general corporation law does not apply to a corporation of any type or kind to which this chapter applies. A reference in any statute of this state which makes a provision of the general corporation law applicable to a corporation of any type or kind to which this chapter is applicable or a reference in any statute of this state, other than the membership corporations law, which makes a provision of the membership corporations law applicable to a corporation of any type or kind shall be deemed and construed to refer to and make applicable the corresponding provision, if any, of this chapter.

(c) If any provision in articles one to thirteen inclusive of this chapter conflicts with a provision of any subsequent articles or of any special act under which a corporation to which this chapter applies is formed, the provision in such subsequent article or special act prevails. A provision of any such subsequent article or special act relating to a matter referred to in articles one to thirteen inclusive and not in conflict therewith is supplemental and both shall apply. Whenever the board of a corporation, formed under a special act, reasonably makes an interpretation as to whether a provision of the special act or this chapter prevails, or both apply, such interpretation shall govern unless and until a court determines otherwise, if such board has acted in good faith for a purpose which it reasonably believes to be in the best interests of the corporation, provided however, that such interpretation shall not bind any governmental body or officer.

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(d) This chapter applies to commerce with foreign nations and among the several states, and to corporations formed by or under any act of congress, only to the extent permitted under the constitution and laws of the United States.

(e) The enactment of this chapter shall not affect the duration of a corporation which is existing on the effective date of this chapter. Any such existing corporation, its members, directors and officers shall have the same rights and be subject to the same limitations, restrictions, liabilities and penalties as a corporation formed under this chapter, its members, directors and officers.

(f) This chapter shall not affect any cause of action, liability, penalty or action or special proceeding, which on the effective date of this chapter, is accrued, existing, incurred or pending but the same may be asserted, enforced, prosecuted or defended as if this chapter had not been enacted.

#### § 103-A. Relationship to other laws

(a) This chapter is not intended to authorize any entity to do any act prohibited by any regulatory law.

(b) Except as expressly provided otherwise by or pursuant to a regulatory law:

(1) The filing by the department of state of any document under this chapter shall not be effective to exempt an entity from any of the requirements of any regulatory law.

(2) Failure to comply with a regulatory law in connection with an action under this chapter shall not affect the valid existence following the action of an entity that engaged in or was a party to the action.

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(3) If an action under this chapter is enjoined or reversed because of a violation of a regulatory law after the filing that effected the action has become effective, the enjoining or reversal of the action shall not affect the valid existence of an entity that was a party to the action and the existence of any entity whose existence ceased in the action shall be reinstated upon the filing with the department of state by any interested party of a final order not subject to appeal enjoining or reversing the action.

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(c) Any document filed by the department of state or any action taken by any person under the authority of this chapter in violation of any regulatory law shall be ineffective as against New York State, including the officers, departments, agencies, boards and commissions thereof, unless and until the violation is cured.

(d) If and to the extent that a regulatory law sets forth provisions relating to the government and regulation of the affairs of an entity that are inconsistent with the provisions of this chapter on the same subject, the provisions of the regulatory law shall control.

(e) As used in this section, the term "regulatory law" means any statute, other than an organic law, regulating the business of an entity and any rule or regulation validly promulgated under such a statute by any officer, department, agency, board or commission of New York State.

*NY CLS N-PCL § 104 (2006)*

§ 104. Certificates; requirements, signing, filing, effectiveness

(a) Every certificate or other instrument relating to a domestic or foreign corporation which is delivered to the department of state for filing under this chapter, other than a certificate of existence under section 1304 (Application for authority; contents), shall be in the English language, except that the corporate name may be in another language if written in English letters or characters.

(b) [Repealed]

(c) Whenever such instrument is required to set forth the date of incorporation or the date when a certificate of incorporation was filed, the original certificate of incorporation is meant. This requirement shall be satisfied, in the case of a corporation created by special act, by setting forth the chapter number and year of passage of such act.

(d) Every such certificate required under this chapter to be signed and delivered to the department of state shall, except as otherwise specified in the section providing for such certificate, be signed either by an officer, director, attorney-in-fact or duly authorized person and include the name and the capacity in which such person signs such certificate.

(e) If an instrument which is delivered to the department of state for filing complies as to form with the requirements of law and the filing fee and tax, if any, required by any statute of this state in connection therewith have been paid, the instrument shall be filed and indexed by the department of state. No certificate of authentication or conformity or other proof shall be required with respect to any verification, oath or acknowledgment of any instrument delivered to the department of state under this chapter, if such verification, oath or acknowledgment purports to have been made before a notary public, or person performing the equivalent function, of one of the states, or any subdivision thereof, of the United States or the District of Columbia. Without limiting the effect of section four hundred three of this chapter, filing and indexing by the department of state shall not be deemed a finding that a certificate conforms to law, nor shall it be deemed to constitute an approval by the department of state of the name of the corporation or the contents of the certificate, nor shall it be deemed to prevent any person with appropriate standing from contesting the legality thereof in an appropriate forum.

**Deleted:** and there has been attached to it the consent or approval of the supreme court justice, governmental body or officer, or, other person or body, if any, whose consent to or approval of such instrument or the filing thereof is required by any statute of this state

(f) Except as otherwise provided in this chapter, such instrument shall become effective upon the filing thereof by the department of state.

(g) The department shall make, certify and transmit a copy of each such instrument to the clerk of the county in which the office of the domestic or foreign corporation is or is to be located. The county clerk shall file and index such copy.

*NY CLS N-PCL § 104-A (2006)*

§ 104-A. Fees

Except as otherwise provided, the department of state shall collect the following fees pursuant to this chapter:

(a) ~~Repealed~~ (b) For the reservation of a corporate name pursuant to section three hundred three of this chapter, ten dollars.

**Deleted:** For filing a certificate of type of not-for-profit corporation pursuant to section one hundred thirteen of this chapter, thirty dollars.

(c) For the resignation of a registered agent for service of process pursuant to section three hundred five of this chapter, thirty dollars.

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(d) For service of process on the secretary of state pursuant to section three hundred six or three hundred seven of this chapter, forty dollars. If the service is in an action brought solely to recover a sum of money not in excess of two hundred dollars and the process is so endorsed, or the process is served on behalf of a county, city, town or village or other subdivision of the state, ten dollars.

(e) For filing a certificate of incorporation pursuant to section four hundred two of this chapter, seventy-five dollars.

(f) For filing a certificate of amendment pursuant to section eight hundred ~~four~~ of this chapter, thirty dollars.

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(g) For filing a certificate of change pursuant to section eight hundred five of this chapter, twenty dollars.

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(h) For filing a restated certificate of incorporation pursuant to section eight hundred seven of this chapter, thirty dollars.

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(i) For filing a certificate of merger or consolidation pursuant to section nine hundred four of this chapter, thirty dollars.

(j) For filing a certificate of merger or consolidation of domestic and foreign corporations pursuant to section nine hundred six of this chapter, thirty dollars.

(k) For filing a certified copy of an order of approval of the supreme court pursuant to section nine hundred seven of this chapter, thirty dollars.

(l) For filing a certificate of dissolution pursuant to section one thousand three of this chapter, thirty dollars.

(m) For filing a certificate of annulment of dissolution pursuant to section one thousand twelve of this chapter, thirty dollars.

(n) For filing an application by a foreign corporation for authority to do business in New York state pursuant to section thirteen hundred four of this chapter, one hundred thirty-five dollars.

(o) For filing a certificate of amendment of an application for authority by a foreign corporation pursuant to section thirteen hundred nine of this chapter, thirty dollars.

(p) For filing a certificate of change of application for authority by a foreign corporation pursuant to section thirteen hundred ten of this chapter, twenty dollars.

(q) For filing a certificate of surrender of authority pursuant to section thirteen hundred eleven of this chapter, thirty dollars.

(r) For filing a statement of the termination of existence of a foreign corporation pursuant to section thirteen hundred twelve of this chapter, thirty dollars. There shall be no fee for the filing by an authorized officer of the jurisdiction of incorporation of a foreign corporation of a certificate that the foreign corporation has been dissolved or its authority or existence has been otherwise terminated or cancelled in the jurisdiction of its incorporation.

(s) For filing any other certificate or instrument, thirty dollars.

*NY CLS N-PCL § 105 (2006)*

§ 105. Certificates; corrections

Any certificate or other instrument relating to a domestic or foreign corporation filed by the department of state under this chapter may be corrected with respect to any informality or error apparent on the face or defect in the execution thereof including the deletion of any matter not permitted to be stated therein. A certificate, entitled "Certificate of correction of . . . . . (correct title of certificate and name of corporation)" shall be signed and delivered to the department of state. It shall set forth the name of the corporation, the date the certificate to be corrected was filed by the department of state, the provision in the certificate as corrected or eliminated and if the execution was defective, the proper execution. The filing of the certificate by the department of state shall not alter

the effective time of the instrument being corrected, which shall remain as its original effective time, and shall not affect any right or liability accrued or incurred before such filing. A corporate name may not be changed or corrected under this section.

*NY CLS N-PCL § 106 (2006)*

§ 106. Certificates as evidence

(a) Any certificate or other instrument filed by the department of state relating to a domestic or foreign corporation and containing statements of fact required or permitted by law to be contained therein, shall be received in all courts, public offices and official bodies as prima facie evidence of such facts and of the execution of such instrument.

(b) Whenever by the laws of any jurisdiction other than this state, any certificate by any officer in such jurisdiction or a copy of any instrument certified or exemplified by any such officer may be received as prima facie evidence of the incorporation, existence or capacity of any foreign corporation incorporated in such jurisdiction, or claiming so to be, such certificate when exemplified, or such copy of such instrument when exemplified shall be received in all courts, public offices and official bodies of this state, as prima facie evidence with the same force as in such jurisdiction. Such certificate or certified copy of such instrument shall be so received, without being exemplified, if it is certified by the secretary of state, or official performing the equivalent function as to corporate records, of such jurisdiction.

*NY CLS N-PCL § 107 (2006)*

§ 107. Corporate seal as evidence

The presence of the corporate seal on a written instrument purporting to be executed by authority of a domestic or foreign corporation shall be prima facie evidence that the instrument was so executed.

*NY CLS N-PCL § 108 (2006)*

§ 108. When notice or lapse of time unnecessary; notices dispensed with when delivery is prohibited

(a) Whenever, under this chapter or the certificate of incorporation or by-laws of any corporation or by the terms of any agreement or instrument, a corporation or the board or any committee thereof is authorized to take any action after notice to any person or persons or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of such period of time, if at any time before or after such action is completed the person or persons entitled to such notice or entitled to participate in the action to be taken or, in the case of a member, by his attorney-in-fact, submit a signed waiver of notice of such requirements.

(b) Whenever any notice or communication is required to be given to any person by this chapter, the certificate of incorporation or by-laws, or by the terms of any agreement or instrument, or as a condition precedent to taking any corporate action and communication with such person is then unlawful under any statute of this state or of the United States or any regulation, proclamation or order issued under said statutes, then the giving of such notice or communication to such person shall not be required and there shall be no duty to apply for license or other permission to do so. Any affidavit, certificate or other instrument which is required to be made or filed as proof of the giving of any notice or communication required under this chapter shall, if such notice or communication to any person is dispensed with under this paragraph, include a statement that such notice or communication was not given to any person with whom communication is unlawful. Such affidavit, certificate or other instrument shall be as effective for all purposes as though such notice or communication had been personally given to such person.

(c) Whenever any notice or communication is required or permitted by this chapter to be given by mail, it shall, except as otherwise expressly provided in this chapter, be mailed to the person to whom it is directed at the address designated by such person for that purpose or, if none is designated, at such person's last known address. Such notice or communication is given when deposited, with postage thereon prepaid, in a post office or official depository under the exclusive care and custody of the United States post office department. Such mailing shall be by first class mail except where otherwise required by this chapter.

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*NY CLS N-PCL § 109 (2006)*

§ 109. Reservation of power

The legislature reserves the right, at pleasure, to alter, amend, suspend or repeal in whole or in part this chapter, or any certificate of incorporation or any authority to do business in this state, of any domestic or foreign corporation, whether or not existing or authorized on the effective date of this chapter.

*NY CLS N-PCL § 110 (2006)*

§ 110. Effect of invalidity of part of chapter; severability

If any provision of this chapter or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared severable.

*NY CLS N-PCL § 111 (2006)*

§ 111. References

Unless otherwise stated, all references in this chapter to articles or sections refer to the articles or sections of this chapter, and all references in any section of this chapter to a lettered or numbered

paragraph or subparagraph refer to the paragraph or subparagraph so lettered or numbered in such section.

*NY CLS N-PCL § 112 (2006)*

§ 112. Actions or special proceedings by attorney-general

(a) The attorney-general may maintain an action or special proceeding:

(1) To annul the corporate existence or dissolve a corporation that has acted beyond its capacity or power or to restrain it from carrying on unauthorized activities;

(2) To annul the corporate existence or dissolve any corporation that has not been duly formed;

(3) To restrain any person or persons from acting as a domestic or foreign corporation within this state without being duly incorporated or from exercising in this state any corporate rights, privileges or franchises not granted to them by the law of the state;

(4) To procure a judgment removing a director of a corporation for cause under section 706 (Removal of directors);

(5) To dissolve a corporation under article 11 (Judicial dissolution);

(6) To restrain a foreign corporation or to annul its authority to carry on activities in this state under section 1303 (Violations).

(7) To enforce any right given under this chapter to members, a director or an officer of a corporation. The attorney-general shall have the same status as the members.

(8) Upon application, ex parte, for an order to the supreme court at a special term held within the judicial district where the office of the corporation is located, and if the court so orders, to enforce any right given under this chapter to members, a director or an officer of a corporation. For such purpose, the attorney-general shall have the same status as such members, director or officer.

(b) In an action or special proceeding brought by the attorney-general under any of the provisions of this chapter:

(1) If an action, it is triable by jury as a matter of right.

(2) The court may confer immunity in accordance with the provisions of section six hundred nineteen-c of the code of criminal procedure.

(3) A temporary restraining order to restrain the commission or continuance of the unlawful acts which form the basis of the action or special proceeding may be granted upon proof, by affidavit, that the defendant or defendants have committed or are about to commit such acts. Application for such restraining order may be made ex parte or upon such notice as the court may direct.

(4) If the action or special proceeding is against a foreign corporation, the attorney-general may apply to the court at any stage thereof for the appointment of a temporary receiver of the assets in this state of such foreign corporation, whenever it has assets or property of any kind whatsoever, tangible or intangible, within this state.

(5) When final judgment in such action or special proceeding is rendered against the defendant or defendants, the court may direct the costs to be collected by execution against any or all of the

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**Deleted:** To compel the directors and officers, or any of them, of a Type B or Type C corporation which has been dissolved under section 1011 (Dissolution for failure to file certificate of type of Not-for-Profit Corporation Law under section 113) to account for the assets of the dissolved corporation.¶  
(9)

**Deleted:** Type A

defendants or by order of attachment or other process against the person of any director or officer of a corporate defendant.

(6) In connection with any such proposed action or special proceeding, the attorney-general may take proof and issue subpoenas in accordance with the civil practice law and rules.

(c) In any such action or special proceeding against a foreign corporation which has not designated the secretary of state as its agent for service of process under section 304 (Statutory designation of secretary of state as agent for service of process), any of the following acts in this state by such foreign corporation shall constitute the appointment by it of the secretary of state as its agent upon whom process against such foreign corporation may be served.

(1) As used in this paragraph the term "resident" shall include individuals, domestic corporations of any type or kind and foreign corporations of any type or kind authorized to do business or carry on activities in the state.

(2) Any act done, or representation made as part of a course of the solicitation of orders, or the issuance, or the delivery of contracts for, or the sale of, property, or the performance of services to residents which involves or promotes a plan or scheme to defraud residents in violation of the laws or the public policy of the state.

(3) Any act done as part of a course of conduct of business or activities in the solicitation of orders from residents for property, goods or services, to be delivered or rendered within this state to, or on their behalf, where the orders or contracts are executed by such residents within this state and where such orders or contracts are accompanied or followed by an earnest money deposit or other down payment or any installment payment thereon or any other form of payment, which payment is either delivered in or transmitted from the state.

(4) Any act done as part of the conduct of a course of business or activities with residents which defrauds such residents or otherwise involves or promotes an attempt by such foreign corporation to circumvent the laws of this state.

(d) Paragraphs (b), (c), (d) and (e) of section 307 (Service of process of unauthorized foreign corporation) shall apply to process served under paragraph (c).

*NY CLS N-PCL § 113 (2006)*

§ 113. [repealed]

*NY CLS N-PCL § 114 (2006)*

§ 114. Visitation of supreme court

Corporations, whether formed under general or special laws, with their books and vouchers, shall be subject to the visitation and inspection of a justice of the supreme court, or of any person appointed by the court for that purpose. If it appears by the verified petition of a member or creditor of any such corporation, that it, or its directors, officers or agents, have misappropriated any of the funds or property of the corporation, or diverted them from the purpose of its incorporation, or that the corporation has acquired property in excess of the amount which it is authorized by law to hold,

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Deleted: (a) Every corporation to which this chapter applies and which is in existence on September 1, 1970, except those described in paragraph (b) of this section, shall in all respects be considered a type B corporation unless it shall deliver to the department of state a signed certificate, entitled "Certificate of type of not-for-profit corporation of . . . . . (name of corporation) under section 113 of the Not-for-Profit Corporation Law", or unless its certificate of incorporation has been amended to state its type under section 201 (Purposes). A certificate of type shall set forth:¶

(1) The name of the corporation and, if its name has been changed, the name under which it was formed.¶

(2) The date its certificate of incorporation was filed by the department of state and the law under which it was formed.¶

(3) A designation of the secretary of state as agent of the corporation upon whom process against it may be served and post office address within or without this state to which the secretary of state shall mail a copy of any process against it served upon him.¶

(4) That under section 201 (Purposes) it is a Type ---- (insert A, B, C or D) not-for-profit corporation as defined in this chapter.¶

¶  
(b) The following corporations are exempt from the provisions of paragraph (a)¶

(1) A corporation to which is applicable, and whose type is determined by, the education law, the religious corporations law and the private housing finance law.¶

(2) A corporation formed under an article of the membership corporations law or any predecessor general law or special act, which if formed currently would be formable under, and its type determined by, a section of article fourteen hereof.¶

(3) A corporation otherwise within the provisions of paragraph (a), which has as its principal purpose a religious, educational or charitable purpose, and is operated, supervised or controlled by or in connection with a religious corporation.¶

(4) A corporation having a right under paragraph (a) of section 103 (Application) to elect to file a certificate of type under this section.¶

(5) Anything to the contrary herein notwithstanding any corporation exempt hereunder may deliver a certificate of type described in paragraph (a) to the department of state.¶

¶

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... [3]

or has engaged in any business other than that stated in its certificate of incorporation, the court may order that notice of at least eight days, with a copy of the petition, be served on the corporation and the persons charged with misconduct, requiring them to show cause at a time and place specified, why they should not be required to make and file an inventory and account of the property, effects and liabilities of such corporation with a detailed statement of its transactions during the twelve months next preceding the granting of such order. On the hearing of such application, the court may make an order requiring such inventory, account and statement to be filed, and proceed to take and state an account of the property and liabilities of the corporation, or may appoint a referee for that purpose. When such account is taken and stated, after hearing all the parties to the application, the court may enter a final order determining the amount of property so held by the corporation, its annual income, whether any of the property or funds of the corporation have been misappropriated or diverted to any other purpose than that for which such corporation was incorporated, and whether such corporation has been engaged in any activity not covered by its certificate of incorporation. An appeal may be taken from the order by any party aggrieved to the appellate division of the supreme court, and to the court of appeals, as in a civil action. No corporation shall be required to make and file more than one inventory and account in any one year, nor to make a second account and inventory, while proceedings are pending for the statement of an account under this section.

*NY CLS N-PCL § 115 (2006)*

§ 115. ~~[repealed]~~

*NY CLS N-PCL § 201 (2006)*

§ 201. Purposes

(a) A corporation, as defined in subparagraph (5), paragraph (a) of § 102 (Definitions), may be formed under this chapter as provided in paragraph (b) unless it may be formed under any other corporate law of this state in which event it may not be formed under this chapter unless such other corporate law expressly so provides.

(b) Notwithstanding any other provision of this chapter or any other general law, a corporation of any type or kind to which this chapter applies shall conduct no activities for pecuniary profit or financial gain, whether or not in furtherance of its corporate purposes, except to the extent that such activity supports or is incidental to its other lawful activities then being conducted.

*NY CLS N-PCL § 202 (2006)*

§ 202. General and special powers

(a) Each corporation, subject to any limitations provided in this chapter or any other statute of this state or its certificate of incorporation, shall have power in furtherance of its corporate purposes:

- (1) To have perpetual duration.

**Deleted:** Power to solicit contributions for charitable purposes

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**Deleted:** No corporation having the power to solicit contributions for charitable purposes may solicit contributions for any purpose for which approval of such solicitation is required under the provisions of section four hundred four of this chapter unless the certificate specifically makes provision for such solicitation and the required written approval is endorsed on or annexed to such certificate or unless the corporation is among those referred to in section one hundred seventy-two-a of the executive law. If such approval is not obtained and the corporation continues to solicit or to receive contributions for such purpose or advertises that it has obtained such approval, the attorney general, at the request of the officer or body authorized to grant such approval, shall maintain an action or proceeding pursuant to the provisions of subparagraph one of paragraph (a) of section one hundred twelve of this chapter. Such an action may also be maintained in relation to a corporation hereinafter incorporated if the name, purposes, objects or the activities of such corporation may, in any manner, lead to the belief that the corporation possesses or may exercise any of such purposes.¶

**Deleted:** A corporation, of a type and for a purpose or purposes as follows, may be formed under this chapter, provided consents required under any other statute of this state have been obtained:

**Deleted:** Type A--A not-for-profit corporation of this type may be formed for any lawful non-business purpose or purposes including, but not limited to, any one or more of the following non-pecuniary purposes: civic, patriotic, political, social, fraternal, athletic, agricultural, horticultural, animal husbandry, and for a professional, commercial, industrial, trade or service association.¶

Type B--A not-for-profit corporation of this type may be formed for any one or more of the following non-business purposes: charitable, educational, religious, scientific, literary, cultural or for the prevention of cruelty to children or animals.¶

Type C--A not-for-profit corporation of this type may be formed for any lawful business purpose to achieve a lawful public or quasi-public objective.¶

Type D--A not-for-profit corporation of this type may be formed under this chapter when such formation is authorized by any other corporate law of this state for any business or non-business, or pecuniary or non-pecuniary, purpose or purposes specified by such other law, whether such purpose or purposes ... [4]

(2) To sue and be sued in all courts and to participate in actions and proceedings, whether judicial, administrative, arbitratative or otherwise, in like cases as natural persons.

(3) To have a corporate seal, and to alter such seal at pleasure, and to use it by causing it or a facsimile to be affixed or impressed or reproduced in any other manner.

(4) To purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

(5) To sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, or create a security interest in, all or any of its property, or any interest therein, wherever situated.

(6) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of, mortgage, pledge, use and otherwise deal in and with, bonds and other obligations, shares, or other securities or interests issued by others, whether engaged in similar or different business, governmental, or other activities.

(7) To make capital contributions to other non-profit corporations.

(8) [Repealed]

To make contracts, give guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property or any interest therein, wherever situated.

(9) To lend money, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(10) To conduct the activities of the corporation and have offices and exercise the powers granted by this chapter in any jurisdiction within or without the United States.

(11) To elect or appoint officers, employees and other agents of the corporation, define their duties, fix their reasonable compensation and the reasonable compensation of directors, and to indemnify corporate personnel. Such compensation shall be commensurate with services performed.

(12) To adopt, amend or repeal by-laws, including emergency by-laws made pursuant to subdivision seventeen of section twelve of the state defense emergency act, relating to the activities of the corporation, the conduct of its affairs, its rights or powers or the rights or powers of its members, directors or officers.

(13) To make donations, irrespective of corporate benefit, for the public welfare or for community fund, hospital, charitable, educational, scientific, civic or similar purposes, and in time of war or other national emergency in aid thereof.

(14) To be a member, associate or manager of other non-profit activities or to the extent permitted in any other jurisdiction to be an incorporator of other corporations, and to be a partner in a redevelopment company formed under the private housing finance law.

(15) To have and exercise all powers necessary to effect any or all of the purposes for which the corporation is formed.

(16) To establish conditions and requirements for admission, maintenance, and termination of members in the corporation. (b) When any corporation shall have sold or conveyed any part of its

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Deleted: If any general or special law heretofore passed, or any certificate of incorporation, shall limit the amount of property a corporation may take or hold, or the yearly income from the corporate assets or any part thereof, such corporation may take and hold property of the value of fifty million dollars or less, or the yearly income derived from which shall be six million dollars or less, or may receive yearly income from such corporate assets of six million dollars or less, notwithstanding any such limitations. In computing the value of such property, no increase in value arising otherwise than from improvements made thereon shall be taken into account.¶

¶  
(c)



real property, the supreme court, notwithstanding a restriction in any general or special law, may authorize it to purchase and hold from time to time other real property, upon satisfactory proof that the value of the property so purchased does not exceed the value of the property so sold and conveyed within the three years next preceding the application.

~~(c)~~ A corporation formed under general or special law to provide parks, playgrounds or cemeteries, or buildings and grounds for camp or grove meetings. Sunday school assemblies, cemetery purposes, temperance, missionary, educational, scientific, musical and other meetings, subject to the ordinances and police regulations of the county, city, town, or village in which such parks, playgrounds, cemeteries, buildings and grounds are situated, may appoint from time to time one or more special policemen, with power to remove the same at pleasure. Such special policemen shall preserve order in and about such parks, playgrounds, cemeteries, buildings and grounds, and the approaches thereto, and to protect the same from injury, and shall enforce the established rules and regulations of the corporation. Every policeman so appointed shall within fifteen days after his appointment and before entering upon the duties of his office, take and subscribe the oath of office prescribed in the thirteenth article of the constitution of the state of New York, which oath shall be filed in the office of the county clerk of the county where such grounds are situated. A policeman appointed under this section when on duty shall wear conspicuously a metallic shield with the name of the corporation which appointed him inscribed thereon. The compensation of policemen appointed under this section shall be paid by the corporation by which they are appointed.

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~~(d)~~ Any wilful trespass in or upon any of the parks, playgrounds, buildings or grounds provided for the purposes mentioned in the preceding paragraph, or upon the approaches thereto, and any wilful injury to any of the said parks, playgrounds, building or grounds, or to any trees, shrubbery, fences, fixtures or other property thereon or pertaining thereto, and any wilful disturbance of the peace thereon by intentional breach of the rules and regulations of the corporation, is a misdemeanor.

Deleted: (e)

~~(e)~~ No corporation shall conduct activities in New York state under any name, other than that appearing in its certificate of incorporation, without compliance with the filing provisions of section one hundred thirty of the general business law governing the conduct of business under an assumed name.

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#### *NY CLS N-PCL § 203 (2006)*

#### § 203. Defense of ultra vires

(a) No act of a corporation and no transfer of real or personal property to or by a corporation, otherwise lawful, shall, ~~be~~ invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such transfer, but such lack of capacity or power may be asserted:

Deleted: if duly approved or authorized by a judge, court or administrative department or agency as required,

(1) In an action by a member against the corporation to enjoin the doing of any act or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made under any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the action and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may



allow to the corporation or to the other parties to the contract, as the case may be, such compensation as may be equitable for the loss or damage sustained by any of them from the action of the court in setting aside and enjoining the performance of such contract; provided that anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(2) In an action by or in the right of the corporation to procure a judgment in its favor against an incumbent or former officer or director of the corporation for loss or damage due to his unauthorized act.

(3) In an action or special proceeding by the attorney-general to annul or dissolve the corporation or to enjoin it from the carrying on of unauthorized activities.

*NY CLS N-PCL § 204 (2006)*

*NY CLS N-PCL § 301 (2006)*

§ 301. Corporate name; general

(a) Except as otherwise provided in this chapter or otherwise provided by law, the name of a domestic or foreign corporation:

(1) Shall, contain the word "corporation", "incorporated", "limited", "association", "club", "foundation", "fund", "institute", "union", or "society" or an abbreviation of one of such words; or, in the case of a foreign corporation, it shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof.

(2) (A) Shall be such as to distinguish it from the names of corporations of any type or kind, or a fictitious name of an authorized foreign corporation filed pursuant to article thirteen of this chapter, as such names appear on the index of names of existing domestic and authorized foreign corporations of any type or kind, including fictitious names of authorized foreign corporations filed pursuant to article thirteen of this chapter, in the department of state, division of corporations, or a name the right to which is reserved.

(B) Shall be such as to distinguish it from (i) the names of domestic limited liability companies, (ii) the names of authorized foreign limited liability companies, (iii) the fictitious names of authorized foreign limited liability companies, (iv) the names of domestic limited partnerships, (v) the names of authorized foreign limited partnerships, or (vi) the fictitious names of authorized foreign limited partnerships, in each case, as such names appear on the index of names of existing domestic and authorized foreign limited liability companies, including fictitious names of authorized foreign limited liability companies, in the department of state, or on the index of names of existing domestic or authorized foreign limited partnerships, including fictitious names of authorized foreign limited partnerships, in the department of state, or names the rights to which are reserved; provided, however, that no corporation that was formed prior to the effective date of this clause and no foreign corporation that was qualified to conduct activities in this state prior to such effective date shall be required to change the name or fictitious name it had on such effective date solely by reason of such name or fictitious name being indistinguishable from the name or fictitious name of any domestic or

**Deleted:** § 204. Limitation on activities¶

¶ Notwithstanding any other provision of this chapter or any other general law, a corporation of any type or kind to which this chapter applies shall conduct no activities for pecuniary profit or financial gain, whether or not in furtherance of its corporate purposes, except to the extent that such activity supports its other lawful activities then being conducted.¶

¶ *NY CLS N-PCL § 205 (2006)*¶

¶ § 205. Conveyance of real property to members for dwelling houses¶

¶ A not-for-profit corporation, if its by-laws so provide, and pursuant to the provisions thereof, and without leave of the court, may convey to a member of the corporation a portion of its real property for the erection thereupon of a cottage or other dwelling-house with suitable out-buildings. When so conveyed the title to such portion, together with the buildings thereon, shall continue in such member and on his death pass to his heirs or devisees, but the land shall not be alienable except to the corporation or to a member thereof.¶

**Deleted:** unless the corporation is formed for charitable or religious purposes, or for purposes for which the approval of the commissioner of social services or the public health council is required, or is a bar association,

**Deleted:** or

authorized foreign limited liability company or limited partnership or from any name the right to which is reserved by or on behalf of any domestic or foreign limited liability company or limited partnership.

(3) Shall not contain any word or phrase, or any abbreviation or derivative thereof, the use of which is prohibited or restricted by section 404 (~~Notices, approvals and consents~~) or any other statute of this state, unless in the latter case the restrictions have been complied with.

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(4) Shall not contain any word or phrase, or any abbreviation or derivative thereof, in a context which indicates or implies that the corporation, if domestic, is formed or, if foreign, is authorized for any purpose or is possessed in this state of any power other than a purpose for which, or a power with which, the domestic corporation may be and is formed or the foreign corporation is authorized.

(5) (A) Shall not contain any of the following phrases, or any abbreviation or derivative thereof:

state police  
state trooper

(B) Shall not contain any of the following words, or any abbreviation or derivative thereof:

acceptance	fidelity	mortgage
annuity	finance	savings
assurance	guaranty	surety
bank	indemnity	title
bond	insurance	trust
casualty	investment	underwriter
doctor	lawyer	
endowment	loan	

~~unless the approval of the superintendent of banks or the superintendent of insurance, as appropriate, has been obtained; or unless the word "doctor", "lawyer", or the phrase "state police" or "state trooper" or an abbreviation or derivation thereof, is used in the name of a corporation the membership of which is composed exclusively of doctors, lawyers, state policemen or state troopers, respectively.~~

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Deleted: is attached to the certificate of incorporation, or application for authority or amendment thereof; or that

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(6) Shall not contain any words or phrases, or any abbreviation or derivative thereof in a context which will tend to mislead the public into believing that the corporation is an agency or instrumentality of the United States or the state of New York or a subdivision thereof or is a public corporation.

(7) Shall not contain any word or phrase, or any abbreviation or derivation thereof, which, separately, or in context, shall be indecent or obscene or shall ridicule or degrade any person, group, belief, business or agency of government or indicate or imply any unlawful activity.

Deleted: the word "cooperative" or an abbreviation, contraction or derivative thereof.¶

(8) Shall not contain

(8) Notwithstanding any other provision of this chapter, may, in the case of a foundation organized for the sole purpose of publishing the literary works of a deceased person, include the word "doctor" or any abbreviation or derivative thereof as part of its name if such word, abbreviation or derivative is used to identify the person whose works are to be published.

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*NY CLS N-PCL § 302 (2006)*

§ 302. Corporate name; exceptions

(a) Any reference to a corporation in this section except as otherwise provided herein shall include both domestic and foreign corporations.

(b) The provisions of section 301 (Corporate name; general):

(1) Shall not require any corporation, existing or authorized under any statute on the effective date of this chapter, to add to, modify or otherwise change its corporate name.

(2) Shall not prevent a corporation with which another corporation is merged, or which is formed by the consolidation of one or more other corporations from having the same name as any of such corporations if at the time such other corporation was authorized or existing under any statute of this state.

(3) Shall not prevent a foreign corporation from being authorized under a name which is similar to the name of a corporation of any type or kind existing or authorized under any statute, if the department of state finds, upon proof by affidavit or otherwise as it may determine, that a difference between such names exists in the terms or abbreviations indicating corporate character or otherwise, that the applicant has conducted activities as a corporation under its said name for not less than ten consecutive years immediately prior to the date of its application, that the activities to be conducted in this state are not the same or similar to the business or activities conducted by the corporation with whose name it may conflict and that the public is not likely to be confused or deceived, and if the applicant shall agree in its application for authority to use with its corporate name, in this state, to be placed immediately under or following such name, the words "a ----- (name of jurisdiction of incorporation) corporation".

*NY CLS N-PCL § 303 (2006)*

§ 303. Reservation of name

(a) A corporate name may be reserved by:

(1) Any person intending to form a domestic corporation.

(2) Any domestic corporation intending to change its name.

(3) Any foreign corporation intending to apply for authority to conduct activities in this state.

(4) Any authorized foreign corporation intending to change its name.

(5) Any person intending to incorporate a foreign corporation and to have it apply for authority to conduct activities in this state.

(6) Any domestic corporation intending to file the consent of the attorney general to reinstate such corporation pursuant to section 1014 of this chapter.

(b) A fictitious name for use pursuant to section 1301 of this chapter may be reserved by:

(1) Any foreign corporation intending to apply for authority to do business in this state, pursuant to paragraph (d) of section 1301 of this chapter.

(2) Any authorized foreign corporation intending to change its fictitious name under which it conducts activities in this state.

(3) Any authorized foreign corporation which has changed its corporate name in its jurisdiction, which new corporate name is not available in this state.

(c) Application to reserve a corporate name shall be delivered to the department of state. It shall set forth the name and address of the applicant, the name to be reserved and a statement of the basis under paragraph (a) or (b) for the application. The secretary of state may require the applicant to set forth in his application the nature of the activities to be conducted by the corporation. If the name is available for corporate use, the department of state shall reserve the name for the use of the applicant for a period of sixty days and issue a certificate of reservation. The prohibitions, restrictions and qualifications set forth in section 301 (Corporate name; general), section 302 (Corporate name; exceptions) and section 404 (~~Notices, approvals and consents~~) are not waived by the issuance of a certificate of reservation. The certificate of reservation shall include the name of the applicant, the name reserved and the date of the reservation. The certificate of reservation (or in lieu thereof an affidavit by the applicant or by his agent or attorney that the certificate of reservation has been lost or destroyed) shall accompany the certificate of incorporation or the application for authority when either is delivered to the department of state.

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(d) The secretary of state may extend the reservation for additional periods of not more than sixty days each, upon the written request of the applicant, his attorney or agent delivered to the department of state, to be filed before the expiration of the reservation period then in effect. Such request shall have attached to it the certificate of reservation of name. Not more than two such extensions shall be granted.

(e) Upon the request of the applicant, delivered to the department of state before the expiration of the reserved period, together with the certificate of reservation, the department shall cancel the reservation.

(f) Any application or request under this section shall be signed by the applicant, his attorney or agent.

*NY CLS N-PCL § 304 (2006)*

§ 304. Statutory designation of secretary of state as agent of domestic corporations formed under article four of this chapter and authorized foreign corporations for service of process

(a) The secretary of state shall be the agent of every domestic corporation formed under article four of this chapter and every authorized foreign corporation upon whom process against the corporation may be served.

(b) Any designation by a domestic corporation formed under article four of this chapter or foreign corporation of the secretary of state as such agent, which designation is in effect on the effective

date of this chapter, shall continue. Every domestic corporation formed under article four of this chapter or foreign corporation, existing or authorized on the effective date of this chapter, which has not designated the secretary of state as such agent, shall be deemed to have done so.

(c) Any designation by a domestic corporation formed under article four of this chapter or foreign corporation of an agent other than the secretary of state which is in effect on the effective date of this chapter shall continue in effect until changed or revoked as provided in this chapter.

(d) Any designated post-office address to which the secretary of state shall mail a copy of process served upon the secretary of state, as agent of a domestic corporation formed under article four of this chapter or foreign corporation, shall continue until the filing of a certificate under this chapter directing the mailing to a different post-office address.

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*NY CLS N-PCL § 305 (2006)*

§ 305. Registered agent for service of process

(a) Every domestic corporation or authorized foreign corporation may designate a registered agent in this state upon whom process against such corporation may be served. The agent shall be a natural person who is a resident of or has a business address in this state or a domestic corporation or foreign corporation of any type or kind formed, or authorized to do business in this state, under this chapter or under any other statute of this state.

(b) Any such designation of a registered agent may be made, revoked or changed as provided in this chapter.

(c) A registered agent may resign as such agent. A certificate, entitled "Certificate of resignation of registered agent of . . . . . (name of designating corporation) under *section 305 of the Non-Profit Corporation Law*", shall be signed by the registered agent and delivered to the department of state. It shall set forth:

Deleted: Not-for-Profit

Deleted: him

(1) That the registered agent resigns as registered agent for the designating corporation.

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(2) The date the certificate of incorporation or the application for authority of the designating corporation was filed by the department of state.

(3) That the registered agent has sent a copy of the certificate of resignation by registered mail to the designating corporation at the post-office address on file in the department of state specified for the mailing of process or if such address is the address of the registered agent, then to the office of the designating corporation in the jurisdiction of its formation or incorporation.

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(d) The designation of a registered agent shall terminate thirty days after the filing by the department of state of a certificate of resignation or a certificate containing a revocation or change of the designation, whichever is filed earlier. A certificate designating a new registered agent may be delivered to the department of state by the corporation within the thirty days or thereafter.

*NY CLS N-PCL § 306 (2006)*

§ 306. Service of process

(a) Service of process on a registered agent may be made in the manner provided by law for the service of a summons, as if the registered agent was a defendant.

(b) Service of process on the secretary of state as agent of a domestic corporation formed under article four of this chapter or an authorized foreign corporation shall be made by personally delivering to and leaving with the secretary of state or his or her deputy, or with any person authorized by the secretary of state to receive such service, at the office of the department of state in the city of Albany, duplicate copies of such process together with the statutory fee, which fee shall be a taxable disbursement. Service of process on such corporation shall be complete when the secretary of state is so served. The secretary of state shall promptly send one of such copies by certified mail, return receipt requested, to such corporation, at the post office address, on file in the department of state, specified for the purpose. If a domestic corporation formed under article four of this chapter or an authorized foreign corporation has no such address on file in the department of state, the secretary of state shall so mail such copy to such corporation at the address of its office within this state on file in the department.

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(c) If an action or special proceeding is instituted in a court of limited jurisdiction, service of process may be made in the manner provided in this section if the office of the domestic corporation formed under article four of this chapter or foreign corporation is within the territorial jurisdiction of the court.

(d) Nothing in this section shall affect the right to serve process in any other manner permitted by law.

*NY CLS N-PCL § 307 (2006)*

§ 307. Service of process on unauthorized foreign corporation

(a) In any case in which a non-domiciliary would be subject to the personal or other jurisdiction of the courts of this state under article three of the civil practice law and rules, a foreign corporation not authorized to conduct activities in this state is subject to a like jurisdiction. In any such case, process against such foreign corporation may be served upon the secretary of state as its agent. Such process may issue in any court in this state having jurisdiction of the subject matter.

(b) Service of such process upon the secretary of state shall be made by personally delivering to and leaving with the secretary of state or his or her deputy, or with any person authorized by the secretary of state to receive such service, at the office of the department of state in the city of Albany, a copy of such process together with the statutory fee, which fee shall be a taxable disbursement. Such service shall be sufficient if notice thereof and a copy of the process are:

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(1) Delivered personally without this state to such foreign corporation by a person and in the manner authorized to serve process by law of the jurisdiction in which service is made, or

(2) Sent by or on behalf of the plaintiff to such foreign corporation by registered mail with return receipt requested, to the post office address specified for the purpose of mailing process, on file

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in the department of state, or with any official or body performing the equivalent function, in the jurisdiction of its incorporation, or if no such address is there specified, to its registered or other office there specified, or if no such office is there specified, to the last address of such foreign corporation known to the plaintiff.

(c) (1) Where service of a copy of process was effected by personal service, proof of service shall be by affidavit of compliance with this section filed, together with the process, within thirty days after such service, with the clerk of the court in which the action or special proceeding is pending. Service of process shall be complete ten days after such papers are filed with the clerk of the court.

(2) Where service of a copy of process was effected by mailing in accordance with this section, proof of service shall be by affidavit of compliance with this section filed, together with the process, within thirty days after receipt of the return receipt signed by the foreign corporation, or other official proof of delivery or of the original envelope mailed. If a copy of the process is mailed in accordance with this section, there shall be filed with the affidavit of compliance either the return receipt signed by such foreign corporation or other official proof of delivery or, if acceptance was refused by it, the original envelope with a notation by the postal authorities that acceptance was refused. If acceptance was refused, a copy of the notice and process together with the notice of the mailing by registered mail and refusal to accept shall be promptly sent to such foreign corporation at the same address by ordinary mail and the affidavit of compliance shall so state. Service of process shall be complete ten days after such papers are filed with the clerk of the court. The refusal to accept delivery of the registered mail or to sign the return receipt shall not affect the validity of the service and such foreign corporation refusing to accept such registered mail shall be charged with knowledge of the contents thereof.

(d) Service made as provided in this section shall have the same force as personal service made within this state.

(e) Nothing in this section shall affect the right to serve process in any other manner permitted by law.

*NY CLS N-PCL § 308 (2006)*

#### § 308. Records and certificates of department of state

The department of state shall keep a record of each process served upon the secretary of state under this chapter, including the date of service. It shall, upon request made within ten years of such service, issue a certificate under its seal certifying as to the receipt of the process by an authorized person, the date and place of such service and the receipt of the statutory fee. Process served upon the secretary of state under this chapter may be destroyed by the secretary of state after a period of ten years from such service.

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*NY CLS N-PCL § 401 (2006)*

#### § 401. Incorporators

One or more natural persons at least eighteen years of age may act as incorporators of a corporation to be formed under this chapter.



§ 402. Certificate of incorporation; contents

(a) A certificate, entitled "Certificate of Incorporation of . . . . . (name of corporation), under section 402 of the Non-Profit Corporation Law," shall be signed by each incorporator with the name and address of such incorporator included in such certificate and delivered to the department of state. It shall set forth:

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(1) The name of the corporation.

(2) That the corporation is a corporation as defined in subparagraph (a) (8) of section 102 (Definitions) and the purpose or purposes for which it is formed.

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(3) The county within the state in which the office of the corporation is to be located. It may also set forth the post office address of an office without the state, at which, pursuant to section 621 (Books and records; right of inspection; prima facie evidence), the books and records of account of the corporation shall be kept.

(4) The duration of the corporation if other than perpetual.

Deleted: (4) In the case of a Type A, Type B, or Type C corporation, the names and addresses of the initial directors. In the case of a Type D corporation, the names and addresses of the initial directors, if any, may but need not be set forth.¶  
(5)

(5) A designation of the secretary of state as agent of the corporation upon whom process against it may be served and the post office address within or without this state to which the secretary of state shall mail a copy of any process against it served upon the secretary of state.

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(6) If the corporation is to have a registered agent, the name and address within this state of such agent and a statement that the registered agent is to be the agent of the corporation upon whom process against it may be served.

(7) The statements, if any, with respect to special non-profit corporations required under article 14 (Special non-profit corporations).

(b) If the certificate is for the incorporation of an existing unincorporated association or group it shall have annexed thereto an affidavit of the subscribers of such certificate stating that they constitute a majority of the members of a committee duly authorized to incorporate such association or group.

(c) The certificate of incorporation may set forth any provision, not inconsistent with this chapter or any other statute of the state, which provision is (1) for the regulation of the internal affairs of the corporation, including types or classes of membership and the distribution of assets on dissolution or final liquidation, (2) relating to matters that are required or permitted to be set forth in the by-laws or (3) required by any governmental body or officer or other person or body as a condition for incorporation.

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Deleted: giving the consent or approval required for the filing of such certificate of

(d) The certificate of incorporation may set forth a provision eliminating or limiting the personal liability of directors to the corporation or its members for damages for any breach of duty in such capacity, provided that no such provision shall eliminate or limit:

(1) the liability of any director if a judgment or other final adjudication adverse to such director establishes that such director's acts or omissions were in bad faith or involved intentional miscon-

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duct or a knowing violation of law or that such director personally gained in fact a financial profit or other advantage to which such director was not legally entitled or that such director's acts violated section 719, or

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(2) the liability of any director for any act or omission prior to the adoption of a provision authorized by this paragraph.

*NY CLS N-PCL § 403 (2006)*

§ 403. Certificate of incorporation; effect

Upon the filing of the certificate of incorporation by the department of state, the corporate existence shall begin, and such certificate shall be conclusive evidence that all conditions precedent have been fulfilled and that the corporation has been formed under this chapter, except in an action or special proceeding brought by the attorney-general. Where the certificate is for the incorporation of an unincorporated association or group, the members of such association or group shall be members of the corporation so created, and all property owned by or held for it shall belong to and vest in the corporation, subject to all existing incumbrances and claims as if incorporation had not taken place. Where the certificate is for the reincorporation of a corporation created by special law for purposes for which a corporation may be formed under this chapter, such reincorporation shall not effect a dissolution of the corporation but shall be a continuation of its corporate existence, without affecting its then existing property rights or liabilities, or the liabilities of its members or officers as such, but thereafter it shall have only such rights, powers and privileges, and be subject to such other duties and liabilities as a corporation formed for the same purposes under this chapter. Notwithstanding the above, a certificate of incorporation may set forth a date subsequent to filing, not to exceed ninety days after filing, upon which date corporate existence shall begin.

*NY CLS N-PCL § 404 (2006)*

§ 404. Notices, approvals and consents

Deleted: Approvals

(a) Every corporation the certificate of incorporation of which includes among its purposes the formation of a trade or business association shall provide a certified copy of such certificate, within thirty days after the filing of such certificate, to the attorney-general.

Deleted: shall have endorsed thereon or annexed thereto the consent of

(b) (1) Every corporation the certificate of incorporation of which includes among its purposes the care of destitute, delinquent, abandoned, neglected or dependent children; the establishment or operation of any adult care facility, or the establishment or operation of a residential program for victims of domestic violence as defined in subdivision four of section four hundred fifty-nine-a of the social services law, or the placing-out or boarding-out of children or a home or shelter for unmarried mothers, excepting the establishment or maintenance of a hospital or facility providing health-related services as those terms are defined in article twenty-eight of the public health law and a facility for which an operating certificate is required by articles sixteen, nineteen, twenty-two and thirty-one of the mental hygiene law; or the solicitation of contributions for any such purpose or

purposes, shall provide a certified copy of the certificate of incorporation, within thirty days after the filing of such certificate, ~~to the commissioner of the office of children and family services or with respect to any adult care facility, the commissioner of health.~~

**Deleted:** shall have endorsed thereon or annexed thereto the approval of

(2) A corporation whose statement of purposes specifically includes the establishment or operation of a child day care center, as that term is defined in section three hundred ninety of the social services law, shall provide a certified copy of the certificate of incorporation, each amendment thereto, and any certificate of merger, consolidation or dissolution involving such corporation to the office of children and family services within thirty days after the filing of such certificate, amendment, merger, consolidation or dissolution with the department of state. This requirement shall also apply to any foreign corporation filing an application for authority under section thirteen hundred four of this chapter, any amendments thereto, and any surrender of authority or termination of authority in this state of such corporation.

(c) Every corporation the certificate of incorporation of which includes among the purposes of the corporation, the establishment, maintenance and operation of a hospital service or a health service or a medical expense indemnity plan or a dental expense indemnity plan as permitted in article forty-three of the insurance law, shall provide a certified copy of the certificate of incorporation, within thirty days after the filing of such certificate, ~~to the superintendent of insurance and the commissioner of health.~~

**Deleted:** , shall have endorsed thereon or annexed thereto the approval of

(d) Every corporation the certificate of incorporation of which includes a purpose for which a corporation might be chartered by the regents of the university of the State of New York shall provide a certified copy of the certificate of incorporation, within thirty days after the filing of such certificate, ~~to the commissioner of education.~~

**Deleted:** shall have endorsed thereon or annexed thereto the consent of

(e) Every cemetery corporation, except those within the exclusionary provisions of section 1503 (Cemetery corporations), shall provide a certified copy of the certificate of incorporation, within thirty days after the filing of such certificate, ~~to the cemetery board.~~

**Deleted:** certificate of incorporation of a cemetery corporation, except those within the exclusionary provisions of section 1503 (Cemetery corporations)

(f) Every certificate of incorporation of a fire corporation shall have endorsed thereon or annexed thereto the approval, signed and acknowledged, of the authorities of each city, village, town or fire district in which the corporation proposes to act. Such authorities shall be: in a city, the mayor; in a village, a majority of the trustees; in a town, a majority of the members of the town board; in a fire district, a majority of the fire commissioners. The members of the town board of a town, or the trustees of a village, shall not consent to the formation of a fire corporation as hereinbefore provided, until such board shall have held a public hearing on the question of whether the fire company should be incorporated. The notice shall be published at least once in each week for two successive weeks in the official newspaper published in the county in which such fire corporation intends to locate, prior to the regular meeting of such board designated by the chairman of the board to consider the matter. Such notice shall contain the name of the proposed company, the names of the persons signing the certificate of incorporation, a brief description of the territory to be protected by the fire company and that all persons interested shall be heard. If no newspaper is published in the county the publication of the notice shall be in a newspaper in an adjoining county selected by the chairman of such board. All expenses in connection with such publication shall be borne by the parties making the application and paid before the hearing.

**Deleted:** shall have endorsed thereon or annexed thereto the approval of

(g) Every corporation for prevention of cruelty to animals shall provide a certified copy of the certificate of incorporation, within thirty days after the filing of such certificate, to the American Society for the Prevention of Cruelty to Animals.

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**Deleted:** shall have endorsed thereon or annexed thereto the approval of

(h) Every Young Men's Christian Association shall provide a certified copy of the certificate of incorporation, within thirty days after the filing of such certificate, to the chairman of the national board of Young Men's Christian Associations.

**Deleted:** , or, if such approval be withheld thirty days after application therefor, a certified copy of an order of a justice of the supreme court of the judicial district in which the office of the corporation is to be located, dispensing with such approval, granted upon eight days' notice to such society

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(i) Every corporation the certificate of incorporation of which indicates that the proposed corporation is to solicit funds for or otherwise benefit the armed forces of the United States or of any foreign country, or their auxiliaries, or of this or any other state or any territory, shall provide a certified copy of the certificate of incorporation, within thirty days after the filing of such certificate, to the chief of staff.

(j) Every corporation the certificate of incorporation of which includes among its purposes the organization of wage-earners for their mutual betterment, protection and advancement; the regulation of hours of labor, working conditions, or wages; or the performance, rendition or sale of services as labor consultant, labor-management advisor, negotiator, arbitrator, or specialist; and every certificate of incorporation in which the name of the proposed corporation includes "union", "labor", "council" or "industrial organization", or any abbreviation or derivative thereof in a context that indicates or implies that the corporation is formed for any of the above purposes, shall provide a certified copy of the certificate of incorporation, within thirty days after the filing of such certificate, to the industrial board of appeals.

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(k) Every corporation the certificate of incorporation of which has as its exclusive purpose the promotion of the interests of savings bank life insurance or the promotion of the interests of member banks shall provide a certified copy of the certificate of incorporation, within thirty days after the filing of such certificate, to the superintendent of banks.

(l) Every corporation the certificate of incorporation of which has as its exclusive purpose the creation of an association of licensed insurance agents, licensed insurance brokers, or licensed insurance underwriters and every application for authority of a foreign corporation which is an independent laboratory engaged in testing for public safety, or which has as its purpose the advancement of corporate, governmental, and institutional risk and insurance management, or which has as its exclusive purpose the creation of an association of insurers, each of which is duly licensed in this state or, if it does no business or is not licensed in this state, is duly licensed in another state or foreign jurisdiction shall provide a certified copy of the certificate of incorporation, within thirty days after the filing of such certificate, to the superintendent of insurance.

(m) Every certificate of incorporation in which the name of the proposed corporation includes the name of a political party shall have endorsed thereon or annexed thereto the consent of the chairman of the county committee of such political party of the county in which the office of the corporation is to be located, except in cases where the supreme court finds that the withholding of such consent of the county chairman is unreasonable.

(n) Every corporation the certificate of incorporation of which includes in its name the words "American Legion" shall provide a certified copy of the certificate of incorporation, within thirty days after the filing of such certificate, to the Department of New York, the American Legion,

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(o) Every corporation the certificate of incorporation of which includes among its corporate purposes or powers the establishment or maintenance of any hospital, as defined in article twenty-eight of the public health law, or the solicitation of contributions for any such purpose, or purposes, shall provide a certified copy of the certificate of incorporation, within thirty days after the filing of such certificate, to the public health council.

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(p) Every medical corporation as defined in article forty-four of the public health law and organized pursuant thereto and pursuant to this chapter shall provide a certified copy of the certificate of incorporation, within thirty days after the filing of such certificate, to the commissioner of health and the public health council.

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(q) Every corporation the certificate of incorporation of which includes among its corporate purposes or powers the establishment, or operation of a facility for which an operating certificate from the commissioner of mental health or mental retardation and developmental disabilities is required by article thirty-one or sixteen of the mental hygiene law, or the solicitation of contributions for any such purpose, shall provide a certified copy of the certificate of incorporation, within thirty days after the filing of such certificate, to the commissioner of mental health or mental retardation and developmental disabilities.

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(r) Every health maintenance organization as defined in article forty-four of the public health law and organized pursuant thereto and pursuant to this chapter, shall provide a certified copy of its certificate of incorporation, within thirty days after the filing of such certificate, to the commissioner of health.

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(t) Every corporation the certificate of incorporation of which includes among its purposes and powers the establishment or maintenance of a hospital or facility providing health related services, as those terms are defined in article twenty-eight of the public health law, or the solicitation of contributions for any such purpose or two or more of such purposes, shall provide a certified copy of the certificate of incorporation, within thirty days after the filing of such certificate, to the public health council.

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(u) Every corporation the certificate of incorporation of which includes among the purposes of the corporation, the establishment or operation of a substance abuse, substance dependence, alcohol abuse, alcoholism, or chemical abuse or dependence program, or the solicitation of contributions for any such purpose, shall provide a certified copy of the certificate of incorporation, within thirty days after the filing of such certificate, to the commissioner of the office of alcoholism and substance abuse services.

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(v) Every corporation the certificate of incorporation of which includes among the purposes of the corporation, the establishment, maintenance and operation of a non-profit property/casualty insur-

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ance company, pursuant to article sixty-seven of the insurance law, shall provide a certified copy of the certificate of incorporation, within thirty days after the filing of such certificate, to the superintendent of insurance.

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(w) Every corporation the certificate of incorporation of which includes in the name of the proposed corporation the terms: "school," "education," "elementary," "secondary," "kindergarten," "prekindergarten," "preschool," "nursery school," "museum," "history," "historical," "historical society," "arboretum," "library," "college," "university" or other term restricted by section two hundred twenty-four of the education law; "conservatory," "academy," or "institute," or any abbreviation or derivative of such terms, shall provide a certified copy of the certificate of incorporation, within thirty days after the filing of such certificate, to the commissioner of education.

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*NY CLS N-PCL § 405 (2006)*

§ 405. Organization meeting

(a) After the corporate existence has begun, an organization meeting of the initial directors, or, if directors are not designated in the certificate of incorporation, of the incorporator or incorporators, shall be held within or without this state, for the purpose of adopting by-laws, electing directors to hold office as provided in the certificate of incorporation or the by-laws, and the transaction of such other business as may come before the meeting. The meeting may be held at the call of any director or, if directors are not designated in the certificate of incorporation, any incorporator who shall give at least five days' notice thereof by mail to each other director or incorporator, which notice shall set forth the time and place of the meeting. Notice need not be given to any director or incorporator who submits a signed waiver of notice before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice. If there are more than two directors or incorporators, a majority shall constitute a quorum and the act of the majority of those present at a meeting at which a quorum is present shall be the act of the directors or incorporators. For the purposes of this section an incorporator or director may act in person or by proxy signed by such person or his or her attorney in fact.

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(b) Any action permitted to be taken at an organization meeting may be taken without a meeting if each director or, if directors are not designated in the certificate of incorporation, each incorporator or his or her attorney-in-fact signs an instrument setting forth the action so taken.

(c) If a designated director or an incorporator dies or is for any reason unable to act, the other or others may act. If there is no designated director or incorporator able to act, any person for whom an incorporator is acting as agent may act in his or her stead, or if such other person also dies or is for any reason unable to act, his or her legal representative may act.

*NY CLS N-PCL § 406 (2006)*

§ 406. Private foundation, as defined in the United States internal revenue code of 1986, as amended; provisions included in the certificate of incorporation

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(a) The following provisions ~~shall be~~ included in the certificate of incorporation of every domestic corporation, heretofore or hereafter formed, to which this chapter applies in whole or in part, and which is a "private foundation" as defined in section 509 of the United States internal revenue code of ~~1986, as amended~~ ("code"):

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(1) The corporation shall distribute such amounts for each taxable year at such time and in such manner as not to subject the corporation to tax on ~~undistributed~~ income under section 4942 of the code.

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(2) The corporation shall not engage in any act or self-dealing which is subject to tax under section 4941 of the code.

(3) The corporation shall not retain any excess business holdings which are subject to tax under section 4943 of the code.

(4) The corporation shall not make any investments in such manner as to subject the corporation to tax under section 4944 of the code.

(5) The corporation shall not make any taxable expenditures which are subject to tax under section 4945 of the code.

Except as provided in paragraph (b), this paragraph applies notwithstanding any other provision of the certificate of incorporation or any direction in an instrument referred to in section 513 (Administration of assets received for specific purposes).

(b) Paragraph (a) shall not apply to the extent that it conflicts with any mandatory direction in an instrument by which assets referred to in section 513 were transferred to the corporation prior to the effective date of this section unless such conflicting direction is removed as impracticable under article eight of the estates, powers and trusts law or in any other manner provided by law. The absence of a specific provision in the section 513 instrument for the current use of the principal of the fund, or the presence in such an instrument of a provision, as to the principal of a fund, limited to the principal's being held, invested and reinvested, is not such a conflicting mandatory direction.

Deleted: (b-1) A domestic, not-for-profit corporation that is a "private foundation" as defined in section 509 of the code and that is required by section 6104(d) of the code to make available for public inspection its annual return shall publish notice of the availability of such return for inspection. Such notice shall be published, not later than the day prescribed for filing such annual return (determined with regard to any extension of time for filing), in a newspaper designated by the clerk of the county in which the principal office of the private foundation is located, having general circulation in that county. When such county is located within a city with a population of one million or more, such designation shall be as though such notice were a notice of judicial proceedings. The notice shall state that the annual return of the private foundation is available at its principal office for inspection during regular business hours by any citizen who requests it within one hundred eighty days after the date of such publication, and shall state the address and the telephone number of the private foundation's principal office and the name of its principal manager. A copy or notice published in a newspaper other than the newspaper or newspapers designated by the county clerk shall not be deemed to be one of the publications required by this paragraph.¶

(c) All references in this section to sections of the code shall be to such sections as amended from time to time, or to corresponding provisions of subsequent internal revenue laws.

(d) Nothing in this section shall impair the rights and powers of the courts or the attorney-general of this state.

*NY CLS N-PCL § 501 (2006)*

§ 501. Stock and shares prohibited; membership certificates authorized

A corporation shall not have stock or shares or certificates for stock or for shares, but may issue membership certificates or cards to evidence membership, whether or not connected with any financial contribution to the corporation, as provided in section 601 (Members). The fact that the corporation is a ~~non-profit~~ corporation, and ~~whether~~ the membership certificate or card is non-

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transferable or transferable, shall be noted conspicuously on the face or back of each such certificate or card.

*NY CLS N-PCL § 502 (2006)*

§ 502. Members' capital contributions

(a) The certificate of incorporation may provide that members, upon or subsequent to admission, shall make capital contributions in the amount specified therein. The requirement of a capital contribution may apply to all members, or to the members of a single class, or to members of different classes in different amounts or proportions, in order of priority, if any. Except as otherwise provided in this chapter, the relative rights, preferences and limitations of such certificates in the event of dissolution may be fixed in the certificate of incorporation, subject to the limitation that, unless the certificate of incorporation provides otherwise, if the amounts payable on liquidation are not paid in full, the capital certificates of the same class or preference shall share ratably in repayment or redemption, in accordance with the sums which would be payable on such certificates if all certificates were declared and paid in full, and in any distribution of assets other than by way of certificates in accordance with the sums which would be payable on such distribution if all sums payable were discharged in full.

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(b) A member's capital contribution shall consist of money or other property, tangible or intangible, or labor or services actually received by or performed for the corporation or for its benefit or in its formation or reorganization, a binding obligation to make the contribution in cash or other property, a binding obligation to perform services having an agreed value or a combination thereof. In the absence of fraud in the transaction, the judgment of the board as to the value of the consideration received by the corporation shall be conclusive.

(c) A member's capital contribution shall be evidenced by a capital certificate. A capital certificate shall be non-transferable, except as otherwise provided in the certificate of incorporation of a corporation that is not organized for charitable purposes.

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(d) A member's capital contribution shall not be repaid or redeemed by the corporation except upon dissolution of the corporation or upon redemption of the capital certificate as provided in this chapter. A corporation may provide in its certificate of incorporation that its capital certificates, or some of them, shall be redeemable, in whole or in part, at the option of the corporation only, at such price or prices (not to exceed the amount of the capital contribution), within such period or periods, and on such terms and conditions, not inconsistent with this chapter, as are stated in the certificate of incorporation.

(e) In the event of a default in payment or other performance under the instrument evidencing a Member's binding obligation under this section, the corporation may pursue such remedies as are provided in such instrument or a related agreement or under law.

NY CLS N-PCL § 503 (2006)

§ 503. Capital certificates

(a) Each capital certificate shall be signed by the chairman or vice-chairman of the board or the president or a vice-president and the secretary or an assistant secretary or the treasurer or an assistant treasurer of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the officers upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent or registered by a registrar other than the corporation itself or its employee. In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer before such certificate is issued it may be issued by the corporation with the same effect as if he were such officer at the date of issue.

(b) Each capital certificate shall when issued state upon the face thereof:

- 1. The name of the member to whom issued.
- 2. The amount of the member's capital contribution evidenced by such certificate.
- 3. If applicable, that the certificate of incorporation provide that the capital certificate is transferable.

(c) The fact that the corporation is a non-profit corporation, and that the capital certificate is non-transferable or is transferable, shall be noted conspicuously on the face or back of each such certificate.

NY CLS N-PCL § 504 (2006)

[Repealed] [Repealed]

NY CLS N-PCL § 506 (2006)

§ 506. Bonds and security interests

(a) No corporation shall issue bonds except for money or other property, tangible or intangible, or labor or services actually received by or performed for the corporation or for its benefit or in its formation or reorganization, or a combination thereof. In the absence of fraud in the transaction, the judgment of the board as to the value of the consideration received by the corporation shall be conclusive.

(b) A corporation may pay reasonable interest on its bonds, may issue its bonds at a reasonable discount and may pay a reasonable premium for the redemption thereof prior to maturity, but the holders of its bonds shall not be entitled at any time to receive any part of the income or profit of the corporation nor at maturity to receive more than the principal sum thereof plus interest due and accrued thereon. In the absence of fraud in the transaction, the judgment of the board as to the reasonableness of any such interest, discount or premium shall be conclusive. However, with respect to bonds not a part of a public offering, notwithstanding the terms of the instrument, no member of a corporation shall be entitled to receive, directly or indirectly, as a holder or beneficiary of such

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¶ (a) The certificate of incorporation may provide that the corporation shall be authorized by resolution of the board to accept subventions from members or non-members on terms and conditions not inconsistent with this chapter, and to issue certificates therefor. Subvention certificates shall be nontransferable unless such resolution provides that they shall be transferable, either at will or subject to specified restrictions.¶

¶ (b) A subvention shall consist of money or other property, tangible or intangible, actually received by the corporation or expended for its benefit or for its formation or reorganization, or a combination thereof. In the absence of fraud in the transaction, the judgment of the board as to the value of the consideration received by the corporation shall be conclusive.¶

¶ (c) The rights of holders of subvention certificates shall at all times be subordinate to the rights of creditors of the corporation.¶

¶ (d) The resolution of the board may provide that holders of subvention certificates shall be entitled to a fixed or contingent periodic payment out of the corporate assets equal to a percentage of the original amount or value of the subvention, but such payment shall not exceed two-thirds of the maximum interest rate authorized pursuant to section 5-501 of the general obligations law.¶

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¶ (a) Each subvention certificate shall be signed by the chairman or a vice-chairman of the board or the presi... [6]



bond, prior to maturity or redemption, more than simple interest thereon at a rate equal to the higher of (1) the maximum interest authorized pursuant to *section 5-501 of the general obligations law* or (2) one percent over the prime rate of interest generally prevailing on the interest due date in the Federal Reserve District of New York, nor at maturity or redemption, more than the principal sum thereof plus any interest, not exceeding the maximum interest herein specified, due and accrued thereon.

(c) A corporation may, in its certificate of incorporation or by-laws, confer upon the holders of any bonds issued or to be issued by the corporation, rights to inspect the corporate books and records and, upon default of interest or principal, to vote in the election of directors. The certificate of incorporation or the by-laws may apportion the number of votes that may be cast with respect to bonds on the basis of the amount of bonds held.

(d) The board may authorize any mortgage or pledge of, or the creation of a security interest in, all or any part of the corporation's personal property, or any interest therein. Unless the certificate of incorporation provides otherwise, no vote or consent of the members shall be required to approve such action by the board.

(e) In the event of a default in payment or other performance under the subscriber's binding obligation to pay the purchase price or perform services, the corporation may pursue such remedies as are provided in such instrument or a related agreement or under law.

(f) A corporation may place in escrow bonds to be issued for a binding obligation to pay cash or other property or to perform future services, or make other arrangements to restrict the transfer of such bonds.

*NY CLS N-PCL § 507 (2006)*

§ 507. Fees, dues and assessments; fines and penalties

(a) If authorized by its certificate of incorporation or by-laws and subject to any limitations stated therein a corporation may levy initiation fees, dues and assessments on its members, whether or not they are voting members, and may impose reasonable fines or other penalties upon its members for violations of its rules and regulations.

(b) Initiation fees, dues or assessments may be levied on all classes of members alike or in different amounts or proportions for different classes of members, as the certificate of incorporation or the by-laws may provide, but in all cases the fees, dues and assessments payable by members of one class shall be determined upon the same basis.

(c) The certificate of incorporation or the by-laws may contain such provisions as are deemed necessary to enforce the collection of fees, dues, assessments, fines or other penalties, including provi-

sions for the termination of membership, upon reasonable notice, for non-payment of such fees, dues, assessments, fines or other penalties, and provisions for reinstatement of membership.

(d) Subject to the provisions of this chapter, the certificate of incorporation may provide that members paying initiation fees, dues or assessments shall, upon dissolution of the corporation, have distributive rights in its assets. The distributive rights may be different for different classes of members, but in all cases the rights of members of one class shall be the same.

*NY CLS N-PCL § 508 (2006)*

§ 508. Income from corporate activities

A corporation whose lawful activities involve among other things the charging of fees or prices for its services or products shall have the right to receive such income and, in so doing, may make an incidental profit. All such incidental profits shall be applied to the maintenance, expansion or operation of the lawful activities of the corporation, and in no case shall be divided or distributed in any manner whatsoever among the members, directors, or officers of the corporation.

*NY CLS N-PCL § 509 (2006)*

§ 509. Purchase, sale, mortgage and lease of real property

No purchase of real property shall be made by a corporation and no corporation shall sell, mortgage or lease real property, unless authorized by the vote of two-thirds of the entire board, provided that if there are twenty-one or more directors, the vote of a majority of the entire board shall be sufficient.

§ 510. Disposition of all or substantially all assets

(a) A sale, lease, exchange or other disposition of all, or substantially all, the assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of cash or other property, real or personal, including shares, bonds or other securities of any other domestic or foreign corporation or corporations of any type or kind, as may be authorized in accordance with the following procedure:

(1) If there are members entitled to vote thereon, the board shall adopt a resolution recommending such sale, lease, exchange or other disposition. The resolution shall specify the terms and conditions of the proposed transaction, including the consideration to be received by the corporation and the eventual disposition to be made of such consideration, together with a statement that the dissolution of the corporation is or is not contemplated thereafter. The resolution shall be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Notice of the meeting shall be given to each member and each holder of ~~subvention certificates or bonds~~ of the corporation, whether or not entitled to vote. At such meeting by two-thirds vote as provided in paragraph (c) of section 613 (Vote of members) the members may approve the proposed transaction according to the terms of the resolution of the board, or may approve such sale, lease, exchange or other disposition and may authorize the board to modify the terms and con-

ditions thereof.

(2) If there are no members entitled to vote thereon, such sale, lease, exchange or other disposition shall be authorized by the vote of at least two-thirds of the entire board, provided that if there are twenty-one or more directors, the vote of a majority of the entire board shall be sufficient.

(3) If the corporation is, or would be if formed under this chapter, organized for charitable purposes or holds assets received for specific purposes, such sale, lease, exchange or other disposition, other than to another corporation organized for charitable purposes and controlled by, or under common control with, the corporation, shall in addition require leave of the supreme court in the judicial district or of the county court of the county in which the corporation has its office or principal place of carrying out the purposes for which it was formed.

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(b) After such authorization the board in its discretion may abandon such sale, lease, exchange or other disposition of assets, subject to the rights of third parties under any contract relating thereto, without further action or approval.

#### § 511. Petition for leave of court

(a) A corporation required by law to obtain leave of court to sell, lease, exchange or otherwise and intends to dispose of all or substantially all its assets, other than to another corporation organized for charitable purposes and controlled by, or under common control with, the corporation, shall present a verified petition to the supreme court of the judicial district, or the county court of the county, wherein the corporation has its office or principal place of carrying out the purposes for which it was formed. The petition shall set forth:

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1. The name of the corporation, the law under or by which it was incorporated.
2. The names of its directors and principal officers, and their places of residence.
3. The activities of the corporation.

4. A description, with reasonable certainty, of the assets to be sold, leased, exchanged, or otherwise disposed of, or a statement that it is proposed to sell, lease, exchange or otherwise dispose of all or substantially all the corporate assets more fully described in a schedule attached to the petition; and a statement of the fair value of such assets, and the amount of the corporation's debts and liabilities and how secured.

5. The consideration to be received by the corporation and the disposition proposed to be made thereof, together with a statement that the dissolution of the corporation is or is not contemplated thereafter.

6. That the consideration and the terms of the sale, lease, exchange or other disposition of the assets of the corporation are fair and reasonable to the corporation, and that the purposes of the corporation, or the interests of its members will be promoted thereby, and a concise statement of the reasons therefor.

7. That such sale, lease, exchange or disposition of corporate assets, has been recommended or authorized by vote of the directors in accordance with law, at a meeting duly called and held, as shown in a schedule annexed to the petition setting forth a copy of the resolution granting such authority with a statement of the vote thereon.

8. Where the consent of members of the corporation is required by law, that such consent has been given, as shown in a schedule annexed to the petition setting forth a copy of such consent, if in writing, or of a resolution giving such consent, adopted at a meeting of members duly called and held, with a statement of the vote thereon.

9. A prayer for leave to sell, lease, exchange or otherwise dispose of all or substantially all the assets of the corporation as set forth in the petition.

(b) Upon presentation of the petition, the court shall direct that a minimum of fifteen days notice be given by mail or in person to the attorney general, and in its discretion may direct that notice of the application be given, personally or by mail, to any person interested therein, as member, officer or creditor of the corporation. The court shall have authority to shorten the time for service on the attorney general upon a showing of good cause. The notice shall specify the time and place, fixed by the court, for a hearing upon the application. Any person interested, whether or not formally notified, may appear at the hearing and show cause why the application should not be granted.

(c) If the corporation be insolvent, or if its assets be insufficient to liquidate its debts and liabilities in full, the application shall not be granted unless all the creditors of the corporation shall have been served, personally or by mail, with a notice of the time and place of the hearing.

(d) If it shall appear, to the satisfaction of the court, that the consideration and the terms of the transaction are fair and reasonable to the corporation and that the purposes of the corporation or the interests of the members will be promoted, it may authorize the sale, lease, exchange or other disposition of all or substantially all the assets of the corporation, as described in the petition, for such consideration and upon such terms as the court may prescribe. The order of the court shall direct the disposition of the consideration to be received thereunder by the corporation.

NY CLS N-PCL § 512 (2006)

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#### § 512. Investment authority

In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investments by a fiduciary, and subject to the provisions of section 717 (Duty of directors and officers), may:

(1) invest and reinvest an institutional fund, in the name of the corporation or in the name of a nominee of the corporation, in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or non-profit corporations, shares in or obligations of associations, partnerships, or individuals, and obligations of any government or subdivision or instrumentality thereof;

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(2) retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable, taking into account any request by the donor to do so;

(3) include all or any part of an institutional fund in any pooled or common fund available for investment which is maintained by the corporation; and

(4) invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

*NY CLS N-PCL § 513 (2006)*

§ 513. Administration of assets received for specific purposes

(a) A corporation shall hold full ownership rights in any assets consisting of funds or other real or personal property of any kind, that may be given, granted, bequeathed or devised to or otherwise vested in such corporation in trust for, or with a direction to apply the same to, any purpose specified in its certificate of incorporation, and shall not be deemed a trustee of an express trust of such assets.

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(b) Except as may be otherwise permitted under article eight of the estates, powers and trusts law or section 518 (Release of restrictions on use or investment), the governing board shall apply all assets thus received to the purposes specified in the gift instrument and to the payment of the reasonable and proper expenses of administration of such assets. The governing board shall cause accurate accounts to be kept of such assets separate and apart from the accounts of other assets of the corporation. Unless the terms of the particular gift instrument provide otherwise, the treasurer shall make an annual report to the members (if there be members) or to the governing board (if there be no members) concerning the assets held under this section and the use made of such assets and of the income thereof.

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(c) The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized (with respect to all assets) and unrealized (with respect only to readily marketable assets), in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by section 717 (Duty of directors and officers). This section is not intended to restrict the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument or the certificate of incorporation of the corporation.

(d) Paragraph (c) of this section does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only "income," "interest," "dividends," or "rents, issues or profits," or "to preserve the principal intact," or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after the effective date of said paragraph (c).

*NY CLS N-PCL § 514 (2006)*

§ 514. Delegation of investment management

(a) Except as otherwise provided by the applicable gift instrument, the governing board may (1) delegate to its committees, officers or employees of the corporation or the fund, or agents, including investment counsel, the authority to act in place of the governing board in investment and reinvestment of institutional funds, (2) contract with independent investment advisors, investment counsel or managers, banks, or trust companies, so to act, and (3) authorize the payment of compensation for investment advisory or management services, advisors, investment counsel or managers, banks, or trust companies, so to act. Each contract pursuant to which authority is so delegated shall provide that it may be terminated by the governing board at any time, without penalty, upon not more than sixty days' notice.

(b) The governing board shall exercise the standard of care required by section 717 (Duty of directors and officers) in the selection of persons to whom authority is delegated or with whom contracts are made under paragraph (a) of this section and in the continuation or termination of such delegation or contracts. The governing board shall be relieved of all liability for the investment and reinvestment of institutional funds by, and for the other acts or omissions of, persons to whom authority is so delegated or with whom contracts are so made.

*NY CLS N-PCL § 515 (2006)*

§ 515. Dividends prohibited; certain distributions of cash or property authorized

(a) A corporation shall not pay dividends or distribute any part of its income or profit to its members, directors, or officers.

(b) A corporation may pay compensation in a reasonable amount to members, directors, or officers for services rendered, and may make distributions of cash or property to members upon dissolution or final liquidation as permitted by this chapter.

(c) A corporation may confer benefits upon members or nonmembers in conformity with its purposes, may redeem its capital certificates, and may make other distributions of cash or property to its members or former members, directors, or officers prior to dissolution or final liquidation, as authorized by this article, except when the corporation is currently insolvent or would thereby be made insolvent or rendered unable to carry on its corporate purposes, or when the fair value of the corporation's assets remaining after such conferring of benefits, or redemption, or other distribution would be insufficient to meet its liabilities.

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*NY CLS N-PCL § 516 (2006)*

§ 516. Distributions to members upon termination of membership

(a) Except as provided in this chapter or the certificate of incorporation or the by-laws, the interest of a member in the property of a corporation shall terminate upon the termination of his member-

ship, whether by expiration of the term of membership, or by the death, voluntary withdrawal, or expulsion of the member, or otherwise. Such termination shall be without prejudice to his rights, if any, as holder of a capital certificate.

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(b) In the event of a termination of membership, whether voluntary or involuntary, and subject to any restrictions contained in this chapter or the certificate of incorporation or the by-laws, a corporation may at its option thereafter call for redemption any capital certificate or certificates held by such former member, and redeem the same upon payment of a sum of money equal to the redemption price thereof if such certificates are by their terms redeemable, or upon payment of a sum of money equal to the amount of the capital contribution evidenced by such certificates if they are not by their express terms redeemable.

(c) If a member who would upon dissolution of the corporation have distributive rights in its assets under paragraph (d) of section 507 (Fees, dues and assessments; fines and penalties) is expelled other than for cause pursuant to a provision of the certificate of incorporation or by-laws authorizing such expulsion, and the corporation is dissolved within a period of five years after the date of such expulsion, the expelled member shall be entitled to share in the distribution of assets in the same manner as other members of the same class entitled to share at that time, except that his share shall be charged with any arrearages and all dues and assessments which he would have paid if he had remained a member, plus interest on all such items.

(d) Nothing in this section shall authorize a corporation to make a distribution of cash or property to a former member in contravention of the provisions of section 515 (Dividends prohibited; certain distributions of cash or property authorized).

*NY CLS N-PCL § 517 (2006)*

§ 517. Liabilities of members

(a) The members of a corporation shall not be personally liable for the debts, liabilities or obligations of the corporation.

(b) A member shall be liable to the corporation only to the extent of any unpaid portion of the initiation fees, membership dues or assessments which the corporation may have lawfully imposed upon such member, or for any other indebtedness owed by such member to the corporation. No action shall be brought by any creditor of the corporation to reach and apply any such liability to any debt of the corporation until after final judgment shall have been rendered against the corporation in favor of the creditor and execution thereon returned unsatisfied, or the corporation shall have been adjudged bankrupt, or a receiver shall have been appointed with power to collect debts, and which receiver, on demand of a creditor to bring suit thereon, has refused to sue for such unpaid amount, or the corporation shall have been dissolved or ceased its activities leaving debts unpaid. No such action shall be brought more than three years after the happening of any one of such events.

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*NY CLS N-PCL § 518 (2006)*

§ 518. [Repealed]

*NY CLS N-PCL § 519 (2006)*

§ 519. Annual report of directors

(a) The board shall present at the annual meeting of members a report, verified by the president and treasurer or by a majority of the directors, or certified by an independent public or certified public accountant or a firm of such accountants selected by the board, showing in appropriate detail the following:

(1) The assets and liabilities, including the trust funds, of the corporation as of the end of a twelve month fiscal period terminating not more than six months prior to said meeting.

(2) The principal changes in assets and liabilities, including trust funds, during said fiscal period.

(3) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes during said fiscal period.

(4) The expenses or disbursements of the corporation, for both general and restricted purposes, during said fiscal period.

(5) The number of members of the corporation as of the date of the report, together with a statement of increase or decrease in such number during said fiscal period, and a statement of the place where the names and places of residence of the current members may be found.

(b) The annual report of directors shall be filed with the records of the corporation and either a copy or an abstract thereof entered in the minutes of the proceedings of the annual meeting of members.

(c) The board of a corporation having no members shall direct the president and treasurer to present at the annual meeting of the board a report in accordance with paragraph (a), but omitting the requirement of subparagraph (5). This report shall be filed with the minutes of the annual meeting of the board.

*NY CLS N-PCL § 520 (2006)*

§ 520. Reports of corporation

Each domestic corporation, and each foreign corporation authorized to conduct activities in this state, shall from time to time file such reports on its activities as may be required by the laws of this state. All registration and reporting requirements pursuant to *EPTL 8-1.4*, or related successor provisions, are, without limitation on the foregoing, expressly included as reports required by the laws of this state to be filed within the meaning of this section. Willful failure of a corporation to file a report as required by law shall subject the corporation to an order of the attorney general compelling such report(s) to be filed within 60 days of the attorney general's order; and, in the event of continued noncompliance thereafter, to an attorney general action for dissolution under article 11 (Judicial dissolution) in the case of a domestic corporation, or under § 1303 (Violations) in the case of a foreign corporation.

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NY CLS N-PCL § 521 (2006)

§ 521. Liability for failure to disclose required information

Failure of the corporation to comply in good faith with the notice or disclosure or reporting provisions of section 501 (Stock and shares prohibited; membership certificates authorized), or paragraph (c) of section 503 (Capital certificates), or paragraph (b) of section 513 (Administration of assets received for specific purposes), or section 515 (Annual report of directors), or section 516 (Reports of corporation), shall make the corporation liable for any damage sustained by any person in consequence thereof.

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NY CLS N-PCL § 522 (2006)

§ 522. Release of restrictions on use or investment

(a) With the consent of the donor in a writing acknowledged by the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

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(b) If written consent of the donor cannot be obtained by reason of death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the corporation (i) to the supreme court of the judicial district wherein the corporation has its office or principal place of carrying out the purposes for which it was formed, or (ii) where the applicable gift instrument is a will, to the surrogate's court in which such will is probated, for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part. A release under this paragraph (b) may not change an endowment fund to a fund that is not an endowment fund.

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(c) A release under this section may not allow a fund to be used for purposes other than the purposes of the corporation.

(d) This section does not limit the application of the doctrine of cy pres.

NY CLS N-PCL § 601 (2006)

§ 601. Members

(a) A corporation may have one or more classes of members, or no members. A corporation that has one or more classes of members shall set forth in the certificate of incorporation or the by-laws such provision for classes of members. Corporations, joint-stock associations, unincorporated associations and partnerships, as well as any other person without limitation, may be members.

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(b) If the corporation has two or more classes of members, the designation and characteristics of each class and the qualifications and rights of, and limitations upon, the members of each class may be set forth in the certificate of incorporation, the by-laws or, if the by-laws so provide, a resolution of the board.

(c) If the corporation has members, membership may be effected and evidenced by:

- (1) Signature on the certificate of incorporation.
- (2) Designation in the certificate of incorporation or the by-laws.
- (3) Membership certificate or card or capital certificate.

(4) Such method, including but not limited to the foregoing, as is prescribed by the certificate of incorporation or the by-laws.

(d) Membership in a corporation shall not be transferable, except as otherwise provided in the certificate of incorporation or by-laws.

(e) Membership certificates or cards shall not be transferable. If the certificate of incorporation or by-laws permits transfer of membership, upon each such transfer the certificate or card issued to a former member shall be surrendered, and a new certificate or card shall be issued to the new member.

(e) Except as otherwise provided in this chapter or the certificate of incorporation or the by-laws, membership shall be terminated by death, resignation, or expulsion, of a member; dissolution of a corporate member; expiration of a term of membership or dissolution and liquidation under articles 10 and 11.

*NY CLS N-PCL § 602 (2006)*

§ 602. By-laws

(a) The initial by-laws of a corporation may be adopted by its incorporators at the organization meeting and, if not so adopted by the incorporators, by its board. Any reference in this chapter to a "by-law adopted by the members" includes a by-law adopted by the incorporators.

(b) Subject to section 612 (Limitations on right to vote), the by-laws may be adopted, amended or repealed by the members at the time entitled to vote in the election of directors and, unless otherwise provided in the certificate of incorporation or the by-laws adopted by the members, by the board.

(c) By-laws may be amended or repealed by a majority of members at the time entitled to vote in the election of any directors. When so provided in the certificate of incorporation or a by-law adopted by the members, by-laws may also be amended or repealed by the board by such vote as may be therein specified, which may be greater than the vote otherwise prescribed by this chapter, but any by-law adopted by the board, may be amended or repealed by the members entitled to vote

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thereon as herein provided. Any reference in this chapter to a “by-law adopted by the members” shall include a by-law adopted by the incorporator or incorporators.

(d) In the case of a corporation which is subject, under any other law of this state, to regulation or control by a governmental body or officer, such body or officer may, to the extent provided in such other law, in furtherance of its or his authority to regulate or control:

(1) Adopt, amend or repeal by-laws.

(2) Amend or repeal any by-law adopted by the members or the board.

(e) If any by-law regulating an impending election of directors is adopted, amended or repealed by the board, there shall be set forth in the notice of the next meeting of the members for the election of directors the by-law so adopted, amended or repealed, together with a concise statement of the changes made.

(f) The by-laws may contain any provision relating to the business of the corporation, the conduct of its affairs, its rights or powers or the rights or powers of its members, directors or officers, not inconsistent with this chapter or any other statute of this state or the certificate of incorporation.

*NY CLS N-PCL § 603 (2006)*

§ 603. Meetings of members

(a) Meetings of members may be held at such place, within or without this state, as may be fixed by or under the by-laws or, if not so fixed, at the office of the corporation in this state.

(b) A meeting of the members shall be held annually for the election of directors and the transaction of other business on a date fixed by or under the by-laws. Failure to hold the annual meeting on the date so fixed or to elect a sufficient number of directors to conduct the business of the corporation shall not work a forfeiture or give cause for dissolution of the corporation, except as provided in paragraph (a) of section 1102 (Judicial dissolution; petition by directors or members; petition in case of deadlock among directors or members).

(c) Special meetings of the members may be called by the board and by such person or persons as may be authorized by the certificate of incorporation or the by-laws. In any case, such meetings may be convened by the members entitled to cast ten per cent of the total number of votes entitled to be cast at such meeting, who may, in writing, demand the call of a special meeting specifying the date and month thereof, which shall not be less than twenty (20) nor more than sixty (60) days from the date of such written demand. The secretary of the corporation upon receiving the written demand shall promptly give notice of such meeting, or if the secretary fails to do so within five business days thereafter, any member signing such demand may give such notice. The meeting shall be held at the place fixed in the by-laws or, if not so fixed, at the office of the corporation.

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(d) A corporation may provide in its certificate of incorporation or by-laws adopted by the members for the election of representatives or delegates, who, when assembled within or without the state as directed by the certificate of incorporation or the by-laws, shall have and may exercise all of the

powers, rights and privileges of members at an annual meeting. When so exercising the powers, rights and privileges of members, such representatives or delegates shall be subject in all respects to the provisions of this chapter governing members.

(e) Except as otherwise required by this chapter, the by-laws may designate reasonable procedures for the calling and conduct of a meeting of members, included but not limited to specifying: (i) who may call and who may conduct the meeting; (ii) the means by which the order of business to be conducted shall be established; (iii) the procedures and requirements for the nomination of directors; (iv) the procedures with respect to the making of member proposals; and (v) the procedures to be established for the adjournment of any meeting of members.

*NY CLS N-PCL § 604 (2006)*

§ 604. Special meeting for election of directors

(a) If, for a period of one month after the date fixed by or under the by-laws for the annual meeting of members or, if no date has been so fixed, for a period of thirteen months after the formation of the corporation or the last annual meeting, there is a failure to elect a sufficient number of directors to conduct the business of the corporation, the board shall call a special meeting for the election of directors. If such special meeting is not called by the board within two weeks after the expiration of such period or if it is so called but there is a failure to elect such directors for a period of two months after the expiration of such period, members entitled to cast one hundred votes or ten per cent of the total number of votes entitled to be cast in an election of directors, whichever is lesser, may, in writing, demand the call of a special meeting for the election of directors specifying the date and month thereof, which shall not be less than sixty (60) nor more than ninety (90) days from the date of such written demand. The secretary of the corporation upon receiving the written demand shall promptly give notice of such meeting or, if the secretary fails to do so within five business days thereafter, any member signing such demand may give such notice. The meeting shall be held at the place fixed in the by-laws or, if not so fixed, at the office of the corporation.

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(b) At any such special meeting called on the demand of members, notwithstanding section 608 (Quorum of members), the members attending, in person or by proxy, and entitled to vote in an election of directors shall constitute a quorum for the purpose of electing directors, but not for the transaction of any other business.

*NY CLS N-PCL § 605 (2006)*

§ 605. Notice of meeting of members

(a) Whenever under the provisions of this chapter members are required or permitted to take any action at a meeting, written notice shall state the place, date and hour of the meeting and, unless it is an annual meeting, indicate that it is being issued by or at the direction of the person or persons calling the meeting. Notice of a special meeting shall also state the purpose or purposes for which the meeting is called. Notice of any meeting of members may be written or electronic . Notice of any meeting shall be given not fewer than ten (10) nor more than sixty (60) days before the date of the meeting, provided, however, that such notice may be given by third class mail not fewer than

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Deleted: , personally or by mail, to each member entitled to vote at such meeting. If the notice is given personally or by first class mail, it shall be given not less than ten nor more than fifty days before the date of the meeting; if mailed by any other class of mail, it shall be given not less than thirty nor more than sixty days before such date

twenty-four nor more than sixty days before the date of the meeting to each member entitled to vote at such meeting. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the member at the address that appears on the record of members, or, if the member shall have filed with the secretary of the corporation a written request that notices be mailed to some other address, then directed at such other address. If transmitted electronically, such notice is given when directed to the member's electronic mail address as supplied by the member to the secretary of the corporation or as otherwise directed pursuant to the member's authorization or instructions. An affidavit of the secretary or other person giving the notice or of a transfer agent of the corporation that the notice required by this section has been given shall, in the absence of fraud, be prima facie evidence of the facts therein stated. Whenever a corporation has more than five hundred members, the notice may be served by publication, in lieu of mailing, in a newspaper published in the county in the state in which the principal office of the corporation is located, once a week for three successive weeks next preceding the date of the meeting.

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(b) When a meeting is adjourned to another time or place, it shall not be necessary, unless the by-laws require otherwise, to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. However, if after the adjournment the board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each member of record on the new record date entitled to notice under paragraph (a).

*NY CLS N-PCL § 606 (2006)*

§ 606. Waivers of notice

Notice of meeting need not be given to any member who submits a signed waiver of notice, whether before or after the meeting. Waiver of notice may be written or electronic. If written, the waiver must be executed by the member or the member's authorized officer, director, employee or agent by signing such waiver or causing his or her signature to be affixed to such waiver by any reasonable means, including, but not limited to, facsimile signature. If electronic, the transmission of the waiver must either set forth or be submitted with information from which it can reasonably be determined that the transmission was authorized by the member. The attendance of any member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice.

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*NY CLS N-PCL § 607 (2006)*

§ 607. List or record of members at meetings

A list or record of members entitled to vote, certified by the corporate officer responsible for its preparation or by a transfer agent, shall be produced at any meeting of members upon the request therefor of any member who has given written notice to the corporation that such request will be made at least ten days prior to such meeting. If the right to vote at any meeting is challenged, the inspectors of election, or the person presiding thereat, shall require such list or record of members to be produced as evidence of the right of the persons challenged to vote at such meeting, and all per-

sons who appear from such list or record to be members entitled to vote thereat may vote at such meeting.

*NY CLS N-PCL § 608 (2006)*

§ 608. Quorum at meeting of members

(a) Members entitled to cast a majority of the total number of votes entitled to be cast thereat shall constitute a quorum at a meeting of members for the transaction of any business, provided that when a specified item of business is required to be voted on by a class of members, voting as a class, members entitled to cast a majority of the total number of votes entitled to be cast by such class shall constitute a quorum for the transaction of such specified items of business.

(b) The certificate of incorporation or the by-laws may provide for any lesser quorum not less than the members entitled to cast one hundred votes or one-tenth of the total number of votes entitled to be cast, whichever is lesser, and may, under section 615 (Greater requirement as to quorum and vote of members), provide for a greater quorum.

(c) Action to amend the certificate of incorporation or by-laws to conform to paragraph (b) may be taken at a special meeting of members at which the quorum requirements applicable to the corporation immediately prior to the effective date of this chapter are fulfilled, but action may be taken only once under this paragraph.

(d) The members present may adjourn the meeting despite the absence of a quorum.

(e) [Eff April 9, 2006] If for any reason it has proved to be impractical or impossible for a corporation to obtain a quorum in order to conduct a meeting of its members in the manner prescribed by its certificate or by-laws or by statute, then upon the petition of a director, officer or member to the supreme court in the judicial district where the office of the corporation is or was located on notice to the attorney general or by the attorney general, the supreme court may in its discretion dispense with the requirement as to quorums that would otherwise be imposed by the corporation's certificate of incorporation or by-laws or by statute. The petition shall set forth the reasonable efforts the corporation has made to obtain a quorum, including the manner in which the corporation provided notice to its members of prior meetings. The supreme court shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the certificate of incorporation or by-laws or the statute, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section the court may determine who are the members of the corporation.

**Deleted:** (f) For purposes of this section "person" means any association, corporation, joint stock company, estate, general partnership (including any registered limited liability partnership or foreign limited liability partnership), limited association, limited liability company (including a professional service limited liability company), foreign limited liability company (including a foreign professional service limited liability company), joint venture, limited partnership, natural person, real estate investment trust, business trust or other trust, custodian, nominee or any other individual or entity in its own or any representative capacity.

*NY CLS N-PCL § 609 (2006)*

§ 609. Proxies

(a) Except as otherwise provided in the certificate of incorporation or the by-laws:

(1) Every member entitled to vote at a meeting of members or to express consent or dissent without a meeting may authorize another person or persons to act by proxy.

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(2) No proxy shall be valid after the expiration of eleven months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the member executing it, except as otherwise provided in this section.

(3) The authority of the holder of a proxy to act shall not be revoked by the incompetence or death of the member who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by the corporate officer responsible for maintaining the list or record of members.

(4) Except when other provision shall have been made by written agreement between the parties, the record holder of capital certificates which he holds as pledgee or otherwise as security or which belong to another, shall issue to the pledgor or to such owner of such capital certificates, upon demand therefor and payment of necessary expenses thereof, a proxy to vote or take other action thereon.

(5) A member shall not sell his vote or issue a proxy to vote to any person for any sum of money or anything of value, except as authorized in this section and section 619 (Agreements as to voting).

(6) A proxy which is entitled "irrevocable proxy" and which states that it is irrevocable is irrevocable when it is held by any of the following or a nominee of any of the following:

(A) A pledgee.

(B) A person who has purchased or agreed to purchase the capital certificates.

(C) A creditor or creditors of the corporation who extend or continue credit to the corporation in consideration of the proxy if the proxy states that it was given in consideration of such extension or continuation of credit, the amount thereof, and the name of the person extending or continuing credit.

(D) A person who has contracted to perform services as an officer of the corporation, if a proxy is required by the contract of employment, if the proxy states that it was given in consideration of such contract of employment, the name of the employee and the period of employment contracted for.

(E) A person designated by or under an agreement under section 619.

(7) Notwithstanding a provision in a proxy, stating that it is irrevocable, the proxy becomes revocable after the pledge is redeemed, or the debt of the corporation is paid, or the period of employment provided for in the contract of employment has terminated, or the agreement under section 619 has terminated; and, in a case provided for in subparagraphs (6)(C) or (D), becomes revocable three years after the date of the proxy or the end of the period, if any, specified therein, whichever period is less, unless the period of irrevocability is renewed from time to time by the execution of a new irrevocable proxy as provided in this section. This paragraph does not affect the duration of a proxy under subparagraph (2).

(8) A proxy may be revoked, notwithstanding a provision making it irrevocable, by a purchaser of capital certificates without knowledge of the existence of the provision unless the existence of the proxy and its irrevocability is noted conspicuously on the face or back of the capital certificate.



(b) Without limiting the manner in which a member may authorize another person or persons to act as proxy pursuant to paragraph (a) of this section, the following shall constitute a valid means by which a member may grant such authority:

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(1) A member may execute a writing authorizing another person or persons to act as proxy. Execution may be accomplished by the member or the member's authorized officer, director, employee or agent signing such writing or causing his or her signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature.

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(2) A member may authorize another person or persons to act for the member as proxy by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission shall either set forth or be submitted with information from which it can be reasonably determined that the telegram, cablegram or other electronic transmission was authorized by the member. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the nature of the information upon which they relied.

(c) Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to paragraph (b) of this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

*NY CLS N-PCL § 610 (2006)*

§ 610. Selection of inspectors at meeting of members; duties

(a) If the by-laws require inspectors at any meeting of members, such requirement is waived unless compliance therewith is requested by a member present in person or by proxy and entitled to vote at such meeting. Unless otherwise provided in the by-laws, the board, in advance of any meeting of members, may appoint one or more inspectors to act at the meeting or any adjournment thereof. If inspectors are not so appointed, the person presiding at a meeting of members may, and on the request of any member entitled to vote thereat shall, appoint one or more inspectors. In case any person appointed fails to appear or act, the vacancy may be filled by appointment made by the board in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of such inspector's ability. The term inspector" as used herein includes a person performing the function of an inspector, whether or not so denominated by the corporation.

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(b) The inspectors shall determine the number of membership certificates or cards and capital certificates outstanding and the voting power of each, the certificates and cards represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, bal-



lots or consents, hear and determine all challenges, and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all members. On request of the person presiding at the meeting or any members entitled to vote thereat, the inspectors shall make a report in writing of any challenge, question or matter determined by them and execute a certificate of any fact found by them. Any report or certificate made by them shall be prima facie evidence of the facts stated and of the vote as certified by them.

(c) In determining the validity and counting of proxies, ballots and consents, the inspectors, if any, shall be limited to an examination of the proxies, any envelopes submitted with those proxies and consents, any information provided in accordance with section 609 (Proxies) , ballots and the regular books and records of the corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies, ballots and consents. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification pursuant to paragraph (a) of this section shall specify the precise information considered by them including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is reliable.

(d) The date and time (which need not be a particular time of day) of the opening and the closing of the polls for each matter upon which the members will vote at a meeting shall be announced by the person presiding at the meeting at the beginning of the meeting and, if no date and time is so announced, the polls shall close at the end of the meeting, including any adjournment thereof. No ballot, proxy or consent, nor any revocation thereof or changes thereto, shall be accepted by the inspectors after the closing of polls in accordance with section 605 (Notice of meetings of members) unless the supreme court at a special term held within the judicial district where the office of the corporation is located upon application by a member shall determine otherwise.

*NY CLS N-PCL § 611 (2006)*

§ 611. Qualification of voters; fixing record date to determine eligibility to vote; voting entitlement

(a) The by-laws may provide or, in the absence of such provision, the board may fix, in advance, a date as the record date for the purpose of determining the members entitled to notice of any meeting of members or any adjournment thereof. Such record date shall not be more than fifty nor less than ten days before the date of the meeting.

(b) Any member in good standing, otherwise eligible to vote, is entitled to vote at any meeting of members, except that, if the certificate of incorporation or the by-laws so provide, the by-laws may provide or, in the absence of such provision, the board may fix a date as the record date for the purpose of determining the members entitled to vote at any meeting of members or any adjournment thereof, or to express consent to or dissent from any proposal without a meeting, or for the purpose of determining members entitled to receive any distribution or the allotment of any rights, or for the purpose of any other action by the members. Such record date shall not be more than fifty nor less than ten days before the date of the meeting.

(c) If the certificate of incorporation or the by-laws provide for a record date, as authorized by paragraph (b), and no record date is fixed:

(1) The record date for the determination of members entitled to notice of or to vote at a meeting of members shall be at the close of business on the day next preceding the day on which notice is given, or, if no notice is given, the day on which the meeting is held.

(2) The record date for determining members for any purpose other than that specified in subparagraph (1) shall be at the close of business on the day on which the resolution of the board relating thereto is adopted.

(d) When a determination of members of record entitled to notice of or to vote at any meeting of members has been made as provided in this section, such determination shall apply to any adjournment thereof, unless the board fixes a new record date under this section for the adjourned meeting.

(e) In any case in which a member is entitled to vote, the member shall have no more than, nor less than, one vote; except as otherwise provided in the certificate of incorporation of a corporation that is not organized for charitable purposes; provided, however, that if a corporation has an organization as a member, the certificate of incorporation may provide that such organization shall be entitled to votes substantially proportionate to its membership. Any reference in this chapter to corporate action by a majority or other percentage of members shall be construed to mean that percentage of votes with respect to a corporation, the certificate of incorporation or by-laws of which provides for more or less than one vote per member.

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#### *NY CLS N-PCL § 612 (2006)*

##### § 612. Limitations on right to vote

The certificate of incorporation or the by-laws may provide, either absolutely or contingently, that the members of any class shall not be entitled to vote, or it may limit or define the matters on, and the circumstances in, which a member or a class of members shall be entitled to vote, and, except as otherwise provided in this chapter, such provisions of the certificate of incorporation or the by-laws shall prevail, according to their tenor, in all elections and in all proceedings, over the provisions of this chapter which authorize any action by the members, but no such denial, limitation or definition of voting rights shall be effective unless at the time one or more classes of members, singly or in the aggregate, are entitled to full voting rights.

#### *NY CLS N-PCL § 613 (2006)*

##### § 613. Vote of members

(a) Except as otherwise required by this chapter or by the certificate of incorporation or the by-laws as permitted by this chapter, directors shall be elected by a plurality of the votes cast at a meeting of members by the members entitled to vote in the election.

(b) Whenever any corporate action, other than the election of directors, is to be taken under this chapter by vote of the members, it shall, except as otherwise required by this chapter or by the certificate of incorporation or as permitted by this chapter or by the specific provisions of a by-law adopted by the members, be authorized by a majority of the votes cast at a meeting of members by the members entitled to vote thereon.

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(c) Except as provided in paragraph (b), any reference in this chapter to corporate action at a meeting of members by "majority vote" or "two-thirds vote" shall require the action to be taken by such proportion of the votes cast at such meeting, provided that the affirmative votes cast in favor of any such action shall be at least equal to the quorum. Blank votes or abstentions shall not be counted in the number of votes cast.

*NY CLS N-PCL § 614 (2006)*

§ 614. Action by members without a meeting

(a) Whenever, under this chapter, members are required or permitted to take any action by vote, such action may be taken without a meeting on written consent, setting forth the action so taken, signed by all of the members entitled to vote thereon; or, if the certificate of incorporation so permits, signed by those members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. This paragraph shall not be construed to alter or modify any provision in a certificate of incorporation not inconsistent with this chapter under which the written consent of less than all of the members is sufficient for corporate action.

(b) Prompt notice of any corporate action without a meeting by less than unanimous written consent shall be given to those members who have not consented in writing.

(c) Written consent thus given by members provided in paragraph (a) of this section shall have the same effect as a vote of members and any certificate with respect to the authorization or taking of any such action which is delivered to the department of state shall recite that the authorization was by written consent.

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(d) When there are no members, such action may be taken on the written consent signed by a majority in interest of the subscribers for capital certificates whose subscriptions have been accepted or their successors in interest or, if no subscription has been accepted, on the written consent signed by the directors or majority of directors or, if there are no directors, by the incorporator or a majority of the incorporators. When there are two or more incorporators, if any dies or is for any reason unable to act, the other or others may act. If there is no incorporator able to act, any person for whom an incorporator was acting as agent may act in his stead, or if such other person also dies or is for any reason unable to act, his legal representative may act.

*NY CLS N-PCL § 615 (2006)*

§ 615. Greater requirement as to quorum and vote of members

(a) The certificate of incorporation or a by-law adopted by the members may contain provisions specifying either or both of the following:

(1) That the proportion of votes of members, or the proportion of the votes of a class thereof, who shall be present in person or by proxy at any meeting of members, including a special meeting for election of directors under section 604 (Special meeting for election of directors), in order to constitute a quorum for the transaction of any business or of any specified item of business, including amendments to the certificate of incorporation, shall be greater than the proportion prescribed by this chapter in the absence of such provision.

(2) That the proportion of votes of the members, or the proportion of the votes of a class thereof, that shall be necessary at any meeting of members for the transaction of any business or of any specified item of business, including amendments to the certificate of incorporation, shall be greater than the proportion prescribed by this chapter in the absence of such provision.

(b) An amendment of the certificate of incorporation or a by-law adopted by the members which adds a provision permitted by this section or which changes or strikes out such a provision, shall be authorized at a meeting of members by vote of the members entitled to cast two-thirds of the total number of votes entitled to be cast thereon, or of such greater proportion of such total number of votes or the total number of votes of a class, as may be provided specifically in the certificate of incorporation or a by-law adopted by the members for adding, changing or striking out a provision permitted by this section.

(c) If the certificate of incorporation or a by-law adopted by the members contains a provision authorized by this section, the existence of such provision shall be noted conspicuously on the face or back of every membership certificate or card or capital certificate, if any, issued by such corporation.

*NY CLS N-PCL § 616 (2006)*

§ 616. Voting by class of members

(a) The certificate of incorporation or the by-laws may contain provisions specifying that any class or classes of members shall vote as a class in connection with the transaction of any business or of any specified item of business at a meeting of members, including amendments to the certificate of incorporation.

(b) Where voting as a class is provided in the certificate of incorporation or the by-laws, it shall be by the proportionate vote so provided or, if no proportionate vote is provided, in the election of directors, by a plurality of the votes cast at such meeting by the members of such class entitled to vote in the election, or for any other corporate action, by a majority of the votes cast at such meeting by the members of such class entitled to vote thereon.

(c) Such voting by class shall be in addition to any other vote, including vote by class, required by this chapter or by the certificate of incorporation or the by-laws as permitted by this chapter.

*NY CLS N-PCL § 617 (2006)*

§ 617. Cumulative voting

The certificate of incorporation or the by-laws of any corporation may provide that in all elections of directors of such corporation each member shall be entitled to as many votes as shall equal the number of votes which, except for such provisions as to cumulative voting, such member would be entitled to cast for the election of directors multiplied by the number of directors to be elected, and that such member may cast all of such votes for a single director or may distribute them among the number to be voted for, or for any two or more of them, as such member may see fit, which right, when exercised, shall be termed cumulative voting.

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*NY CLS N-PCL § 618 (2006)*

§ 618. Power of supreme court respecting elections

Upon the petition of any member aggrieved by an election and upon notice to the persons declared elected thereat, the corporation and such other persons as the court may direct, the supreme court at a special term held within the judicial district where the office of the corporation is located shall forthwith hear the proofs and allegations of the parties, and confirm the election, order a new election, or take such other action as justice may require.

*NY CLS N-PCL § 619 (2006)*

§ 619. Agreements by members as to voting

An agreement between two or more members, if in writing and signed by the parties thereto, may provide that in exercising their voting rights as members they shall vote as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them.

*NY CLS N-PCL § 620 (2006)*

§ 620. Preemptive rights

There shall be no preemptive rights in relation to membership certificates or cards, capital certificates, or bonds. In the case of bonds having lawful voting rights, this section shall not invalidate otherwise valid contract provisions designed to protect such voting rights.

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*NY CLS N-PCL § 621 (2006)*

§ 621. Books and records; right of inspection; prima facie evidence

(a) Except as otherwise provided herein, every corporation shall keep, at the office of the corporation, correct and complete books and records of account and minutes of the proceedings of its members, board and executive committee, if any, and shall keep at such office or at the office of its

transfer agent or registrar in this state, a list or record containing the names and addresses of all members, the class or classes of membership or capital certificates and the number of capital certificates held by each and the dates when they respectively became the holders of record thereof. A corporation may keep its books and records of account in an office of the corporation without the state, as specified in its certificate of incorporation. Any of the foregoing books, minutes and records may be in written form or in any other form capable of being converted into written form within a reasonable time.

(b) Any member, upon at least five days written demand shall have the right to examine in person or by agent or attorney, during usual business hours, its minutes of the proceedings of its members and list or record of members and to make extracts therefrom. A corporation requested to provide information pursuant to this paragraph shall make available such information in written form and in any other format in which such information is maintained by the corporation and shall not be required to provide such information in any other format.

**Deleted:** person who shall have been a member of record of a corporation for at least six months immediately preceding his demand, or any person holding, or thereunto authorized in writing by the holders of, at least five percent of any class of the outstanding capital certificates

(c) An inspection authorized by paragraph (b) may be denied to such member upon his or her refusal to furnish to the corporation, its transfer agent or registrar an affidavit that such inspection is not desired and will not be used for a purpose which is in the interest of a business or object other than the business of the corporation and that such member has not within five years given, sold or offered for sale any list or record of members of any domestic or foreign corporation or aided or abetted, or attempted or offered to aid or abet, any person in procuring any such list or record of members for any such purpose.

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(d) Upon refusal by the corporation or by an officer or agent of the corporation to permit an inspection of the minutes of the proceedings of its members or of the list or record of members, as herein provided, the person making the demand for inspection may apply to the supreme court in the judicial district where the office of the corporation is located, upon such notice as the court may direct, for an order directing the corporation, its officer or agent to show cause why an order should not be granted permitting such inspection by the applicant. Upon the return day of the order to show cause, the court shall hear the parties summarily, by affidavit or otherwise, and if it appears that the applicant is qualified and entitled to such inspection, the court shall grant an order compelling such inspection and awarding such further relief as to the court may seem just and proper.

(e) Upon the written request of any member or of any person holding, or thereunto authorized in writing by the holders of, at least five percent of any class of the outstanding capital certificates, the corporation shall give or mail to such member an annual balance sheet and profit and loss statement or a financial statement performing a similar function for the preceding fiscal year, and, if any interim balance sheet or profit and loss or similar financial statement has been distributed to its members or otherwise made available to the public, the most recent such interim balance sheet or profit and loss or similar financial statement. The corporation shall be allowed a reasonable time to prepare such annual balance sheet and profit and loss or similar financial statement.

**Deleted:** person who shall have been a member of record for at least six months immediately preceding his request,

(f) Nothing herein contained shall impair the power of courts to compel the production for examination of the books and records of a corporation.

(g) The books and records specified in paragraph (a) shall be prima facie evidence of the facts therein stated in favor of the plaintiff in any action or special proceeding against such corporation or any of its officers, directors or members.

(h) Nothing in this chapter shall require an employee organization certified or recognized for any collective negotiating unit of an employer pursuant to article fourteen of the civil service law to disclose the home address of any member or former member of such organization.

*NY CLS N-PCL § 622 (2006)*

§ 622. Infant members

(a) If the certificate of incorporation or the by-laws provide that a member shall be of full age:

(1) A corporation may treat an infant who holds a membership certificate or card or capital certificate or a bond of such corporation as having capacity to receive and to empower others to receive payments or distributions, to vote or express consent or dissent, in person or by proxy, and to make elections and exercise rights relating to such certificates or bonds, unless, in the case of membership certificates or cards or capital certificates, the corporate officer responsible for maintaining the list or record of members or the transfer agent of the corporation or, in the case of bonds, the treasurer or paying officer or agent has received written notice that such holder is an infant.

(2) An infant holder of a membership certificate or card or capital certificate or a bond of a corporation who has received or empowered others to receive payments or distributions, voted or expressed consent or dissent, or made an election or exercised a right relating thereto, shall have no right thereafter to disaffirm or avoid, as against the corporation, any such act on his part, unless prior to such receipt, vote, consent, dissent, election or exercise, as to membership certificates or cards or capital certificates, the corporate officer responsible for maintaining the list or record of members or its transfer agent or, in the case of bonds, the treasurer or paying officer or agent had received written notice that such holder was an infant.

*NY CLS N-PCL § 623 (2006)*

§ 623. Members' derivative action brought in the right of the corporation to procure a judgment in its favor

(a) An action may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor by five percent or more of any class of members or by such percentage of the holders of capital certificates or of the owners of a beneficial interest in the capital certificates of such corporation.

(b) In any such action, it shall be made to appear that each plaintiff is such a member, holder or owner at the time of bringing the action.



(c) In any such action, the complaint shall set forth with particularity the efforts of the plaintiff or plaintiffs to secure the initiation of such action by the board of the reason for not making such effort.

(d) Such action shall not be discontinued, compromised or settled without the approval of the court having jurisdiction of the action. If the court shall determine that the interests of the members or of any class or classes thereof will be substantially affected by such discontinuance, compromise or settlement, the court, in its discretion, may direct that notice, by publication or otherwise, shall be given to the members or class or classes thereof whose interests it determines will be so affected; if notice is so directed to be given, the court may determine which one or more of the parties to the action shall bear the expense of giving the same, in such amount as the court shall determine and find to be reasonable in the circumstances, and the amount of such expense shall be awarded as special costs of the action and recoverable in the same manner as statutory taxable costs.

(e) If the action on behalf of the corporation was successful, in whole or in part, or if anything was received by the plaintiff or plaintiffs or a claimant or claimants as the result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff or plaintiffs, claimant or claimants, reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff or plaintiffs to account to the corporation for the remainder of the proceeds so received by the plaintiff or plaintiffs. This paragraph shall not apply to any judgment rendered for the benefit of injured members or non-record owners only and limited to a recovery of the loss or damage sustained by them.

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*NY CLS N-PCL § 701 (2006)*

§ 701. Board of directors

(a) Except as otherwise provided in the certificate of incorporation, a corporation shall be managed by its board of directors. Each director shall be at least eighteen years of age; provided, however, that a member of the board of directors of any girl scout council chartered by Girl Scouts of the United States of America, Inc., or any Camp Fire Girls club member serving as a member of the board of directors on the National Board and National Council of Camp Fire Girls, Inc. or on the local board of the Camp Fire Girls, Inc. or any member of Aspira of America Inc. or Aspira of New York Inc. serving on the board of directors, shall be at least sixteen years of age. Notwithstanding the above, a corporation organized for educational purposes primarily for the benefit of individuals below eighteen years of age may include one director below eighteen years of age who is at least sixteen years of age. Further, a corporation organized for recreational or youth development and delinquency prevention purposes primarily for the benefit of individuals below eighteen years of age may include one or more directors, the number of which shall not exceed one-half of the total number of directors for a quorum for the transaction of business, who are at least sixteen years of age but not over eighteen years of age. The certificate of incorporation or the by-laws may prescribe other qualifications for directors, provided, however, any corporation organized for recreation or youth development and delinquency prevention purposes, when increasing the number of directors between the ages of sixteen and eighteen years old to more than one, shall prescribe in its certificate of incorporation the number of such directors not to exceed the limitations of this paragraph.

(b) If the certificate of incorporation vests the management of the corporation, in whole or in part, in one or more persons other than the board, individually or collectively, such other person or persons shall be subject to the same obligations and the same liabilities, and subject to the same protections, for managerial acts or omissions as are imposed upon or afforded to directors by this chapter.

*NY CLS N-PCL § 702 (2006)*

§ 702. Number of directors

(a) The number of directors constituting the entire board shall be not less than three. Subject to such limitation, such number may be fixed by the by-laws or, in the case of a corporation having members, by action of the members or of the board under the specific provisions of a by-law adopted by the members. If not otherwise fixed under this paragraph, the number shall be three. As used in this article, "entire board" means the total number of directors entitled to vote which the corporation would have if there were no vacancies.

(b) The number of directors may be increased or decreased by amendment of the by-laws, by action of the board in a corporation without members, or, in the case of a corporation having members, by action of the members, or of the board under the specific provisions of a by-law adopted by the members, subject to the following limitations:

(1) If the board is authorized by the by-laws to change the number of directors, whether by amending the by-laws or by taking action under the specific provisions of a by-law adopted by the members, such amendment or action shall require the vote of a majority of the entire board.

(2) No decrease shall shorten the term of any incumbent director.

*NY CLS N-PCL § 703 (2006)*

§ 703. Election and term of office of directors; alternates

(a) A corporation may provide in its certificate of incorporation or by-laws for directors to be elected or appointed at large, or by special districts or membership sections, or by virtue of their office or former office in the corporation or other entity, public or private, or by bondholders pursuant to paragraph (c) of section 506 (Bonds and security interests) voting as a class, or any combination thereof.

(b) Directors shall be elected or appointed in the manner and for the term of office provided in the certificate of incorporation or the by-laws. The term of office of directors, other than those elected or appointed by virtue of their office or former office in the corporation or other entity, public or private, shall not exceed five years; and, if the board is classified under section 704 (Classification of directors), such term shall not exceed a number of years equal to the number of classes into which the board is classified. In the absence of a provision fixing the term, it shall be one year.

(c) Each director shall hold office until the expiration of the term for which he or she is elected or appointed, and until his or her successor has been elected or appointed and qualified.

(d) If the certificate of incorporation or by-laws so provide, a special district or membership section entitled to elect or appoint one or more directors may elect or appoint an alternate for each such director. In the absence of a director from a meeting of the board, his alternate may, upon written notice to the secretary of the corporation, attend such meeting and exercise therein the rights, powers, and privileges of the absent director. When so exercising the rights, powers, and privileges of the absent director, such alternate shall be subject in all respects to the provisions of this chapter governing directors.

*NY CLS N-PCL § 704 (2006)*

§ 704. Classification of directors

(a) The certificate of incorporation or a by-law adopted by the members may provide that directors elected or appointed at large shall be divided into either two, three, four or five classes for the purpose of staggering their terms of office and that all or some of the directors elected or appointed otherwise than at large shall be divided into the same or a different number of classes, not exceeding five, for the same purpose. All classes of each type shall be as nearly equal in number as possible.

**Deleted:** and, if provision has been made for cumulative voting under section 617 (Cumulative voting), no class shall include less than three directors

(b) The terms of office of the directors initially classified shall be as follows: that of the first class shall expire at the next annual meeting of members if there be members, or of the board if there be no members, the second class at the second succeeding annual meeting, the third class, if any, at the third succeeding annual meeting, the fourth class, if any, at the fourth succeeding annual meeting and the fifth class, if any, at the fifth succeeding annual meeting. After such initial classification, directors to replace those whose terms expire at each annual meeting shall be elected or appointed at such meeting to hold office for a full term in accordance with such classification.

(c) If directors are classified and the number of directors is thereafter changed by action of the board:

(1) Any newly created directorships or any decrease in directorships shall be so apportioned among the classes as to make all classes as nearly equal in number as possible.

(2) If newly created directorships are filled by the board in a corporation having members, there shall be no classification of the additional directors until the next annual meeting of members.

*NY CLS N-PCL § 705 (2006)*

§ 705. Newly created directorships and vacancies

(a) Newly created directorships resulting from an increase in the number of directors elected or appointed at large, and vacancies among such directors for any reason, may be filled by vote of a majority of the directors then in office, regardless of their number, unless the certificate of incorpo-

ration or the by-laws provide that such newly created directorships or vacancies shall be filled by vote of the members.

(b) Vacancies among directors elected or appointed by special districts or membership sections, or by bondholders voting as a class, shall be filled by action of the persons entitled to vote thereon; except that, if a vacancy remains unfilled for six months after it occurs, and by reason of the absence, illness, or other inability of one or more of the remaining directors a quorum of the board cannot be obtained, the remaining directors, or a majority of them, may appoint a director to fill such vacancy.

(c) A director elected or appointed to fill a vacancy shall hold office until the next annual meeting at which the election of directors is in the regular order of business, and until his successor is elected or appointed and qualified.

(d) Unless otherwise provided in the certificate of incorporation or by-laws, notwithstanding the provisions of paragraphs (a) and (b) of this section, whenever the holders of any class or classes of members are entitled to elect one or more directors by the certificate of incorporation, any vacancy that may be filled by the board or a majority of the directors then in office, as the case may be, shall be filled by a majority of the directors elected by such class or classes then in office, or, if no such director is in office, then as provided in paragraph (a) or (b) of this section, as the case may be.

*NY CLS N-PCL § 706 (2006)*

§ 706. Removal of directors

(a) Except as limited in paragraph (c), any or all of the directors may be removed for cause by vote of the members, or by vote of the directors provided there is a quorum of not less than a majority present at the meeting of directors at which such action is taken.

(b) Except as limited in paragraph (c), if the certificate of incorporation or the by-laws so provide, any or all of the directors may be removed without cause by vote of the members.

(c) The removal of directors, with or without cause, as provided in paragraphs (a) and (b) is subject to the following:

(1) In the case of a corporation having cumulative voting, no director may be removed when the director's removal would be sufficient to elect him or her if voted cumulatively at an election at which the same total number of votes were cast, were then being elected; and

(2) When by the provisions of the certificate of incorporation or the by-laws the members of any class or group, or the holders of bonds, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members of that class or group, or the holders of such bonds, voting as a class.

**Deleted:** votes cast against his removal would be sufficient to elect him if voted cumulatively at an election at which the same total number of votes were cast and the entire board, or the entire class of directors of which he is a member

(d) An action to procure a judgment removing a director for cause may be brought by the attorney-general or by ten percent of the members whether or not entitled to vote. The court may bar from re-election any director so removed for a period fixed by the court.

*NY CLS N-PCL § 707 (2006)*

§ 707. Quorum of directors

Unless a greater proportion is required by this chapter or by the certificate of incorporation or by a by-law adopted by the members, a majority of the entire board shall constitute a quorum for the transaction of business or of any specified item of business, except that the certificate of incorporation or the by-laws may fix the quorum at less than a majority of the entire board, provided that in the case of a board of fifteen members or less the quorum shall be at least one-third of the entire number of members and in the case of a board of more than fifteen members the quorum shall be at least five members plus one additional member for every ten members (or fraction thereof) in excess of fifteen.

*NY CLS N-PCL § 708 (2006)*

§ 708. Action by the board

(a) Except as otherwise provided in this chapter, any reference in this chapter to corporate action to be taken by the board shall mean such action at a meeting of the board.

(b) Unless otherwise restricted by the certificate of incorporation or the by-laws, any action required or permitted to be taken by the board or any committee thereof may be taken without a meeting if all members of the board or the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the board or committee shall be filed with the minutes of the proceedings of the board or committee.

(c) ~~Unless otherwise restricted~~ by the certificate of incorporation or the by-laws, any one or more ~~directors or members of~~ any committee, ~~of the board~~ may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

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(d) Except as otherwise provided in this chapter, the vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be the act of the board.

*NY CLS N-PCL § 709 (2006)*

§ 709. Greater requirement as to quorum and vote of directors

(a) The certificate of incorporation or a by-law adopted by the members may contain provisions specifying either or both of the following:

(1) That the proportion of directors that shall constitute a quorum for the transaction of business or of any specified item of business shall be greater than the proportion prescribed by this chapter in the absence of such provision.

(2) That the proportion of votes of directors that shall be necessary for the transaction of business or of any specified item of business shall be greater than the proportion prescribed by this chapter in the absence of such provision.

(b) An amendment by the members of the certificate of incorporation or of the by-laws which adds a provision permitted by this section or which changes or strikes out such a provision, shall be authorized by vote of two-thirds of the members entitled to vote or of such greater proportion as may be provided specifically in the certificate of incorporation or the by-law for adding, changing or striking out a provision permitted by this section.

(c) If there are no members, an amendment by the board of directors of the certificate of incorporation or the by-law which adds a provision permitted by this section or which changes or strikes out such a provision, shall be authorized at a meeting by vote of two-thirds of the entire board, or of such greater proportion as may be provided specifically in the certificate of incorporation or the by-law for adding, changing or striking out a provision permitted by this section.

*NY CLS N-PCL § 710 (2006)*

§ 710. Place and time of meetings of the board

(a) Meetings of the board, annual, regular or special, may be held at any place within or without this state, unless otherwise provided by the certificate of incorporation or the by-laws.

(b) The time and place for holding annual or regular meetings of the board shall be fixed by or under the by-laws, or, if not so fixed, by the board.

(c) A special meeting may be called at any time by the president or other corporate officer as provided in the by-laws or as determined by the board; and, in the case of a corporation without members, by any director upon written demand of not less than one-fifth of the entire board.

*NY CLS N-PCL § 711 (2006)*

§ 711. Notice of meetings of the board

(a) Unless otherwise provided by the by-laws, regular meetings of the board may be held without notice if the time and place of such meetings are fixed by the by-laws or the board. Special meetings of the board shall be held upon notice to the directors.

(b) The by-laws may prescribe what shall constitute notice of meeting of the board. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board, unless required by the by-laws.

(c) Notice of a meeting need not be given to any alternate director, nor to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director.

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(d) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the by-laws so provide, notice of any adjournment of a meeting of the board to another time or place shall be given to the directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other directors.

*NY CLS N-PCL § 712 (2006)*

§ 712. Executive committee and other committees

(a) If the certificate of incorporation or the by-laws so provide, the board, by resolution adopted by a majority of the entire board, may designate from among its members an executive committee and other committees, each consisting of three or more directors, and each of which, to the extent provided in the resolution or in the certificate of incorporation or by-laws, shall have all the authority of the board, except that no such committee shall have authority as to the following matters:

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(1) The submission to members of any action requiring members' approval under this chapter.

(2) The filling of vacancies in the board of directors or in any committee.

(3) The fixing of compensation of the directors for serving on the board or on any committee.

(4) The amendment or repeal of the by-laws or the adoption of new by-laws.

(5) The amendment or repeal of any resolution of the board which by its terms shall not be so amendable or repealable.

(b) The board may designate one or more directors as alternate members of any committee, who may replace any absent member or members at any meeting of such committee.

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(c) Each committee of the board shall serve at the pleasure of the board. The designation of any such committee and the delegation thereto of authority shall not alone relieve any director of his duty to the corporation under section 717 (Duty of directors and officers).

Deleted: The by-laws may provide for special committees of the board, or may authorize the board to create such special committees as may be deemed desirable. Unless otherwise provided in the by-laws, the members of such committees shall be appointed by the chairman of the board or the president of the corporation if there is no chairman of the board, with the consent of the board. Special committees shall have only the powers specifically delegated to them by the board and in no case shall have powers which are not authorized for standing committees under this section.¶

(d) Committees, other than committees of the board, whether created by the board or by the members, shall be committees of the corporation. Such committees may be elected or appointed in the same manner as officers of the corporation. Provisions of this chapter applicable to officers generally shall apply to members of such committees.

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*NY CLS N-PCL § 713 (2006)*

§ 713. Officers



(a) The board may elect or appoint a president, one or more vice-presidents, a secretary and a treasurer, and such other officers as it may determine, or as may be provided in the by-laws. These officers may be designated by such alternate titles as may be provided in the certificate or incorporation or the by-laws. Any two or more offices may be held by the same person, except the offices of president and secretary, or the offices corresponding thereto.

(b) The certificate of incorporation or a by-law adopted by the members may provide that all officers or that specified officers shall be elected by the members instead of by the board, or it may authorize the president to appoint the other officers, or some of them, subject to approval by the board.

(c) Each officer shall hold office for the term for which elected or appointed, and until his or her successor has been elected or appointed and qualified. Unless otherwise provided in the certificate of incorporation or the by-laws, all officers shall be elected or appointed annually.

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(d) The certificate of incorporation or the by-laws may provide that any one or more officers shall be ex-officio members of the board, with voting rights unless specified otherwise.

(e) All officers as between themselves and the corporation shall have such authority and perform such duties in the management of the corporation as may be provided in the by-laws or, to the extent not so provided, by the board. The board may require any officer to give security for the faithful performance of his or her duties.

*NY CLS N-PCL § 714 (2006)*

§ 714. Removal of officers

(a) Any officer elected or appointed by the board may be removed by the board with or without cause. An officer elected by the members or a class of members may be removed, with or without cause, only by the vote of the members or such class of members, but his or her authority to act as an officer may be suspended by the board for cause.

(b) The removal of an officer without cause shall be without prejudice to his contract rights, if any. The election or appointment of an officer shall not of itself create contract rights.

(c) An action to procure a judgment removing an officer for cause may be brought by the attorney-general, by any director, by ten percent of the members, whether or not entitled to vote, or by the holders of ten percent of the face value of the outstanding capital certificates or bonds having voting rights. The court may bar from re-election or reappointment any officer so removed for a period fixed by the court.

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*NY CLS N-PCL § 715 (2006)*

§ 715. Interested directors and officers

(a) No contract or other transaction between a corporation and one or more of its directors or officers, or between a corporation and any other corporation, firm, association or other entity in which

one or more of its directors or officers are directors or officers, or have a substantial financial interest, shall be either void or voidable for this reason alone or by reason alone that such director or directors or officer or officers are present at the meeting of the board, or of a committee thereof, which authorizes such contract or transaction, or that his or their votes are counted for such purpose:

(1) If the material facts as to such director's or officer's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the board or committee, and the board or committee authorizes such contract or transaction by a vote sufficient for such purpose without counting the vote or votes of such interested director or officer; or

(2) If the material facts as to such director's or officer's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the members entitled to vote thereon, if any, and such contract or transaction is authorized by vote of such members.

(b) If a contract or other transaction between a corporation and one or more of its directors, or between a corporation and any other corporation, firm, association or other entity in which one or more of its directors are directors or officers, or have a substantial financial interest, is not approved in accordance with this subsection, the corporation may avoid the contract or transaction unless the party or parties thereto shall establish affirmatively that the contract or transaction was fair and reasonable as to the corporation at the time it was approved by the board, a committee or the members.

(c) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board or of a committee which authorizes such contract or transaction.

(d) The certificate of incorporation may contain additional restrictions on contracts or transactions between a corporation and its directors or officers or other persons and may provide that contracts or transactions in violation of such restrictions shall be void or voidable.

(e) Unless otherwise provided in the certificate of incorporation or the by-laws, the board shall have authority to fix the compensation of directors for services in any capacity.

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**Deleted:** and as to any such common directorship, officership or financial interest, is made to the directors or members, or known to the board or committee or members authorizing such contract or transaction, as provided in paragraph (a), the contract or transaction may not be avoided by the corporation for the reasons set forth in paragraph (a). If there was no such disclosure or knowledge, or if the vote of such interested director or officer was necessary for the authorization of such contract or transaction at a meeting of the board or committee at which it was authorized

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*NY CLS N-PCL § 716 (2006)*

## § 716. Loans to directors and officers

No loans, other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by a corporation to its directors or officers, or to any other corporation, firm, association or other entity in which one or more of its directors or officers are directors or officers or hold a substantial financial interest, except a loan by one corporation organized for charitable purposes to another corporation organized for charitable purposes. A loan made in violation of this section shall be a violation of the duty to the corporation of the directors or officers authorizing it or participating in it, but the obligation of the borrower with respect to the loan shall not be affected thereby.

**Deleted:** (f) The fixing of salaries of officers, if not done in or pursuant to the by-laws, shall require the affirmative vote of a majority of the entire board unless a higher proportion is set by the certificate of incorporation or by-laws.¶

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§ 717. Duty of directors and officers

(a) Directors and officers shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like positions. In the administration of the powers to make and retain investments pursuant to section 512 (Investment authority), to appropriate appreciation pursuant to section 513 (Administration of assets received for specific purposes), and to delegate investment management of institutional funds pursuant to section 514 (Delegation of investment management), a governing board shall consider among other relevant considerations the long and short term needs of the corporation in carrying out its purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.

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(b) In discharging their duties, directors and officers, when acting in good faith, may rely on information, opinions, reports or statements including financial statements and other financial data, in each case prepared or presented by: (1) one or more officers or employees of the corporation, whom the director believes to be reliable and competent in the matters presented, (2) counsel, public accountants or other persons as to matters which the directors or officers believe to be within such person's professional or expert competence or (3) a committee of the board upon which they do not serve, duly designated in accordance with a provision of the certificate of incorporation or the by-laws, as to matters within its designated authority, which committee the directors or officers believe to merit confidence, so long as in so relying they shall be acting in good faith and with that degree of care specified in paragraph (a) of this section, but the director or officer shall not be considered to be acting in good faith if the director or officer has knowledge concerning the matter in question that would cause such reliance to be unwarranted. Persons shall not be considered to be acting in good faith if they have knowledge concerning the matter in question that would cause such reliance to be unwarranted. Persons who so perform their duties shall have no liability by reason of being or having been directors or officers of the corporation.

(c) In taking action, including, without limitation, action which may involve or relate to a change or potential change in the control of the corporation, a director shall be entitled to consider, without limitation, (1) both the long-term and the short-term interests of the corporation and its members and (2) the effects that the corporation's actions may have in the short-term or in the long-term upon any of the following:

- (i) the prospects for potential growth, development, productivity and financial stability of the corporation;
- (ii) the corporation's current employees;
- (iii) the corporation's retired employees and other beneficiaries receiving or entitled to receive retirement, welfare or similar benefits from or pursuant to any plan sponsored, or agreement entered into, by the corporation;
- (iv) the beneficiaries or recipients of the corporation's services;
- (v) the corporation's creditors;
- (vi) the ability of the corporation to provide, as a going concern, benefits, goods, services, employment opportunities and employment benefits and otherwise to contribute to the communities in which it conducts activities; and

(vii) the accomplishment of the corporation's purposes as stated in the certificate of incorporation.

Nothing in this paragraph shall create any duties owed by any director to any person or entity to consider or afford any particular weight to any of the foregoing or abrogate any duty of the directors, either statutory or recognized by common law or court decisions.

For purposes of this paragraph, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the corporation, whether through membership or otherwise.

*NY CLS N-PCL § 718 (2006)*

§ 718. List of directors and officers

(a) If a member, a corporation, in person or by his attorney or agent, or a representative of the district attorney or of the secretary of state, the attorney general, or other state official, makes a written demand on a corporation to inspect a current list of its directors and officers and their addresses, the corporation shall, within two business days after receipt of the demand and for a period of one week thereafter, make the list available for such inspection at its office during usual business hours. Any correspondence addressed to a director or officer and received by the corporation shall be given by the corporation to the director or officer.

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(b) Upon refusal by the corporation to make a current list of its directors and officers and their addresses available, as provided in paragraph (a), the person making a demand for such list may apply, ex parte, to the supreme court at a special term held within the judicial district where the office of the corporation is located for an order directing the corporation to make such list available. The court may grant such order or take such other action as it may deem just and proper.

*NY CLS N-PCL § 719 (2006)*

§ 719. Liability of directors in certain cases

(a) Directors of a corporation who vote for or concur in any of the following corporate actions shall be jointly and severally liable to the corporation for the benefit of its creditors or members or the ultimate beneficiaries of its activities, to the extent of any injury suffered by such persons, respectively, as a result of such action, or, if there be no creditors or members or ultimate beneficiaries so injured, to the corporation, to the extent of any injury suffered by the corporation as a result of such action:

(1) The distribution of the corporation's cash or property to members, directors or officers, other than a distribution permitted under section 513 (Dividends prohibited; certain distributions of cash or property authorized).

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(2) The redemption of capital certificates or bonds, to the extent such redemption is contrary to the provisions of section 502 (Member's capital contributions), section 504 (Subventions), or section 506 (Bonds and security interests).

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(3) The payment of interest to the holders or beneficiaries of bonds to the extent such payment is contrary to the provisions of section 504 or section 506.

Deleted: of a fixed or contingent periodic sum to the holders of subvention certificates or

(4) [Until April 9, 2006] The distribution of assets after dissolution of the corporation in violation of section 1005 (Procedure after dissolution) or without paying or adequately providing for all known liabilities of the corporation, excluding any claims not filed by creditors within the time limit set in a notice given to creditors under articles 10 (Non-judicial dissolution) or 11 (Judicial dissolution).

(4) [Eff April 9, 2006] The distribution of assets in violation of section 1002-a (Carrying out the plan of dissolution and distribution of assets) or without paying or adequately providing for all known liabilities of the corporation, excluding any claims not filed by creditors within the time limit set in a notice given to creditors under articles 10 (Non-judicial dissolution) or 11 (Judicial dissolution).

(5) The making of any loan contrary to section 716 (Loans to directors and officers).

(b) A director who is present at a meeting of the board, or any committee thereof, at which action specified in paragraph (a) is taken shall be presumed to have concurred in the action unless his or her dissent thereto shall be entered in the minutes of the meeting, or unless he or she shall submit a written dissent to the person acting as the secretary of the meeting before the adjournment thereof, or shall deliver or send by registered mail such dissent to the secretary of the corporation promptly after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action. A director who is absent from a meeting of the board, or any committee thereof, at which such action is taken shall be presumed to have concurred in the action unless he or she shall deliver or send by registered mail a dissent thereto to the secretary of the corporation or shall cause such dissent to be filed with the minutes of the proceedings of the board or committee within a reasonable time after learning of such action.

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(c) Any director against whom a claim is successfully asserted under this section shall be entitled to contribution from the other directors who voted for or concurred in the action upon which the claim is asserted.

(d) Directors against whom a claim is successfully asserted under this section shall be entitled, to the extent of the amounts paid by them to the corporation as a result of such claims:

(1) Upon reimbursement to the corporation of any amount of an improper distribution of the corporation's cash or property, to be subrogated to the rights of the corporation against members, directors or officers who received such distribution with knowledge of facts indicating that it was not authorized by this chapter, in proportion to the amounts received by them respectively.

(2) Upon reimbursement to the corporation of an amount representing an improper redemption of a capital certificate or bond, to have the corporation rescind such improper redemption and recover the amount paid, for their benefit but at their expense, from any member or holder who re-

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ceived such payment with knowledge of facts indicating that such redemption by the corporation was not authorized by this chapter.

(3) Upon reimbursement to the corporation of an amount representing all or part of an improper payment of interest to the holder or beneficiary of a bond, to have the corporation recover the amount so paid, for their benefit but at their expense, from any holder or beneficiary who received such payment with knowledge of facts indicating that such payment by the corporation was not authorized by this chapter.

**Deleted:** of a fixed or contingent periodic sum to the holder of a subvention certificate, or

(4) Upon payment to the corporation of the claim of the attorney general or of any creditor by reason of a violation of subparagraph (a)(4), to be subrogated to the rights of the corporation against any person who received an improper distribution of assets.

(5) Upon reimbursement to the corporation of the amount of any loan made contrary to section 716 (Loans to directors and officers), to be subrogated to the rights of the corporation against a director or officer who received the improper loan.

(e) A director or officer shall not be liable under this section if, in the circumstances, the director discharged his or her duty to the corporation under section 717 (Duty of directors and officers).

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(f) This section shall not affect any liability otherwise imposed by law upon any director or officer.

#### NY CLS N-PCL § 720 (2006)

#### § 720. Actions on behalf of the corporation

(a) An action may be brought against one or more directors or officers of a corporation to procure a judgment for the following relief:

(1) To compel the defendant to account for official conduct in the following cases:

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(A) The neglect of, or failure to perform, or other violation of duties in the management and disposition of corporate assets committed to the duties of such person.

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(B) The acquisition by such person, transfer to others, loss or waste of corporate assets due to any neglect of, or failure to perform, or other violation of the duties of such person.

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(2) To set aside an unlawful conveyance, assignment or transfer of corporate assets, where the transferee knew of its unlawfulness.

(3) To enjoin a proposed unlawful conveyance, assignment or transfer of corporate assets, where there are reasonable grounds for belief that it will be made.

(b) An action may be brought for the relief provided in this section and in paragraph (a) of section 719 (Liabilities of directors in certain cases) by the attorney general, by the corporation, or, in the right of the corporation, by any of the following:

(1) A director or officer of the corporation.

(2) A receiver, trustee in bankruptcy, or judgment creditor thereof.

(3) Under section 623 (Members' derivative action brought in the right of the corporation to procure a judgment in its favor), by one or more of the members thereof.

(4) If the certificate of incorporation or the by-laws so provide, by any contributor to the corporation of cash or property of the value of \$ 1,000 or more.

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(c) In a corporation having no members, an action may be brought by a director against third parties to obtain a judgment in favor of the corporation. The complaint shall set forth with particularity the efforts of the plaintiff to secure the initiation of such action by the board or the reason for not making such efforts. The court in its discretion shall determine whether it is in the interest of the corporation that the action be maintained, and if the action is successful in whole or in part, what reimbursement if any should be made out of the corporate treasury to the plaintiff for reasonable expenses including attorney's fees, incurred in the prosecution of the action.

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*NY CLS N-PCL § 720-a (2006)*

§ 720-a. Liability of directors, officers and trustees

Except as provided in sections seven hundred nineteen and seven hundred twenty of this chapter, and except any action or proceeding brought by the attorney general or, in the case of a charitable trust, an action or proceeding against a trustee brought by a beneficiary of such trust, no person serving without compensation as a director, officer or trustee of a corporation, association, organization or trust described in section 501(c)(3) of the United States internal revenue code shall be liable to any person other than such corporation, association, organization or trust based solely on his or her conduct in the execution of such office unless the conduct of such director, officer or trustee with respect to the person asserting liability constituted gross negligence or was intended to cause the resulting harm to the person asserting such liability. For purposes of this section, such a director, officer or trustee shall not be considered compensated solely by reason of payment of his or her actual expenses incurred in attending meetings or otherwise in the execution of such office.

*NY CLS N-PCL § 721 (2006)*

§ 721. Nonexclusivity of statutory provisions for indemnification of directors and officers

The indemnification and advancement of expenses granted pursuant to, or provided by, this article shall not be deemed exclusive of any other rights to which a director or officer seeking indemnification or advancement of expenses may be entitled, whether contained in the certificate of incorporation or the by-laws or, when authorized by such certificate of incorporation or by-laws, (a) a resolution of members, (b) a resolution of directors, or (c) an agreement providing for such indemnification, provided that no indemnification may be made to or on behalf of any director or officer if a judgment or other final adjudication adverse to the director or officer establishes that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled. Nothing contained in this article shall affect any rights to indemnification to which corporate personnel other than directors and officers may be entitled by contract or otherwise under law.

*NY CLS N-PCL § 722 (2006)*



§ 722. Authorization for indemnification of directors and officers

(a) A corporation may indemnify any person, made, or threatened to be made, a party to an action or proceeding other than one by or in the right of the corporation to procure a judgment in its favor, whether civil or criminal, including an action by or in the right of any other corporation of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan or other enterprise, which any director or officer of the corporation served in any capacity at the request of the corporation, by reason of the fact that he, his testator or intestate, was a director or officer of the corporation, or served such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein, if such director or officer acted, in good faith, for a purpose which he reasonably believed to be in, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the corporation and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his conduct was unlawful.

(b) The termination of any such civil or criminal action or proceeding by judgment, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not in itself create a presumption that any such director or officer did not act, in good faith, for a purpose which he reasonably believed to be in, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the corporation or that he had reasonable cause to believe that his conduct was unlawful.

(c) A corporation may indemnify any person made, or threatened to be made, a party to an action by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he, his testator or intestate, is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of any other corporation of any type or kind, domestic or foreign, of any partnership, joint venture, trust, employee benefit plan or other enterprise, against amounts paid in settlement and reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein, if such director or officer acted, in good faith, for a purpose which he reasonably believed to be in, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the corporation, except that no indemnification under this paragraph shall be made in respect of (1) a threatened action, or a pending action which is settled or otherwise disposed of, or (2) any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation, unless and only to the extent that the court in which the action was brought, or, if no action was brought, any court of competent jurisdiction, determines upon application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such portion of the settlement amount and expenses as the court deems proper.

(d) For the purpose of this section, a corporation shall be deemed to have requested a person to serve an employee benefit plan where the performance by such person of his duties to the corporation also imposes duties on, or otherwise involves services by, such person to the plan or partici-

pants or beneficiaries of the plan; excise taxes assessed on a person with respect to an employee benefit plan pursuant to applicable law shall be considered fines; and action taken or omitted by a person with respect to an employee benefit plan in the performance of such person's duties for a purpose reasonably believed by such person to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is not opposed to the best interests of the corporation.

*NY CLS N-PCL § 723 (2006)*

§ 723. Payment of indemnification other than by court award

(a) A person who has been successful, on the merits or otherwise, in the defense of a civil or criminal action or proceeding of the character described in section 722 shall be entitled to indemnification as authorized in such section.

(b) Except as provided in paragraph (a), any indemnification under section 722 or otherwise permitted by section 721, unless ordered by a court under section 724 (Indemnification of directors and officers by a court), shall be made by the corporation, only if authorized in the specific case:

(1) By the board acting by a quorum consisting of directors who are not parties to such action or proceeding upon a finding that the director or officer has met the standard of conduct set forth in section 722 or established pursuant to section 721, as the case may be, or,

(2) If a quorum under subparagraph (1) is not obtainable or, even if obtainable, a quorum of disinterested directors so directs:

(A) By the board upon the opinion in writing of independent legal counsel that indemnification is proper in the circumstances because the applicable standard of conduct set forth in such sections has been met by such director or officer, or

(B) By the members upon a finding that the director or officer has met the applicable standard of conduct set forth in such sections.

(c) Expenses incurred in defending a civil or criminal action or proceeding may be paid by the corporation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount as, and to the extent, required by paragraph (a) of section 725.

*NY CLS N-PCL § 724 (2006)*

§ 724. Indemnification of directors and officers by a court

(a) Notwithstanding the failure of a corporation to provide indemnification, and despite any contrary resolution of the board or of the members in the specific case under section 723 (Payment of indemnification other than by court award), indemnification shall be awarded by a court to the extent authorized under section 722 (Authorization for indemnification of directors and officers), and paragraph (a) of section 723. Application therefor may be made, in every case, either:

(1) In the civil action or proceeding in which the expenses were incurred or other amounts were paid, or

(2) To the supreme court in a separate proceeding, in which case the application shall set forth the disposition of any previous application made to any court for the same or similar relief and also reasonable cause for the failure to make application for such relief in the action or proceeding in which the expenses were incurred or other amounts were paid.

(b) The application shall be made in such manner and form as may be required by the applicable rules of court or, in the absence thereof, by direction of a court to which it is made. Such application shall be upon notice to the corporation. The court may also direct that notice be given at the expense of the corporation to the members and such other persons as it may designate in such manner as it may require.

(c) Where indemnification is sought by judicial action, the court may allow a person such reasonable expenses, including attorneys' fees, during the pendency of the litigation as are necessary in connection with such person's defense therein, if the court shall find that the defendant has by his or her pleadings or during the course of the litigation raised genuine issues of fact or law.

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*NY CLS N-PCL § 725 (2006)*

§ 725. Other provisions affecting indemnification of directors and officers

(a) All expenses incurred in defending a civil or criminal action or proceeding which are advanced by the corporation under paragraph (c) of section 723 (Payment of indemnification other than by court award) or allowed by a court under paragraph (c) of section 724 (Indemnification of directors and officers by a court) shall be repaid in case the person receiving such advancement or allowance is ultimately found, under the procedure set forth in this article, not to be entitled to indemnification or, where indemnification is granted, to the extent the expenses so advanced by the corporation or allowed by the court exceed the indemnification to which he or she is entitled.

(b) No indemnification, advancement or allowance shall be made under this article in any circumstance where it appears:

(1) That the indemnification would be inconsistent with the law of the jurisdiction of incorporation of a foreign corporation which prohibits or otherwise limits such indemnification; or

(2) That the indemnification would be inconsistent with a provision of the certificate of incorporation, a by-law, a resolution of the board or of the members, an agreement or other proper corporate action, in effect at the time of the accrual of the alleged cause of action asserted in the threatened or pending action or proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(3) If there has been a settlement approved by the court, that the indemnification would be inconsistent with any condition with respect to indemnification expressly imposed by the court in approving the settlement.

(c) If any expenses or other amounts are paid by way of indemnification, otherwise than by court order or action by the members, the corporation shall prepare a statement specifying the persons paid, the amounts paid, and the nature and status at the time of such payment of the litigation or threatened litigation, and

(1) Not later than the next annual meeting of members, unless such meeting is held within three months from the date of such payment, and, in any event, within fifteen months of the date of such payment, shall mail the statement to its members of record entitled at the time to vote for the election of directors; or

(2) If the corporation has no members, shall include the statement in the records of the corporation open to public inspection, or

(3) If the corporation is a cemetery corporation, as defined in paragraph (a) of section 1502 (Definitions), which term, for the purposes of this section, shall include a religious corporation having members, (i) by including the statement required by this paragraph or paragraph (d) of section 726 (Insurance for indemnification of directors and officers), as the case may be in the records of the corporation open to public inspection; (ii) by including the information required by the statement in any notice published pursuant to the provisions of section 605 (Notice of meeting of members), except as otherwise provided by law; (iii) by enclosing the statement with the notice of annual meeting if such notice is in fact mailed to the members; and (iv) by raising the issue for approval at the next annual meeting of the members.

(d) If any action with respect to indemnification of directors and officers is taken by way of amendment of the by-laws, resolution of directors, or by agreement, then the corporation shall, not later than the next annual meeting of members, unless such meeting is held within three months from the date of such action, and, in any event, within fifteen months from the date of such action, mail to its members of record at the time entitled to vote for the election of directors a statement specifying the action taken. If the corporation has no members, the statement shall be included in the records of the corporation open to public inspection.

(e) The provisions of this article relating to indemnification of directors and officers and insurance therefor shall apply to domestic corporations and foreign corporations conducting activities in this state, except as provided in section 1321 (Exemption from certain provisions).

*NY CLS N-PCL § 726 (2006)*

§ 726. Insurance for indemnification of directors and officers

(a) Subject to paragraph (b), a corporation shall have power to purchase and maintain insurance:

(1) To indemnify the corporation for any obligation which it incurs as a result of the indemnification of directors and officers under the provisions of this article, and

(2) To indemnify directors and officers in instances in which they may be indemnified by the corporation under the provisions of this article, and

(3) To indemnify directors and officers in instances in which they may not otherwise be indemnified by the corporation under the provisions of this article provided the contract of insurance cov-

ering such directors and officers provides, in a manner acceptable to the superintendent of insurance, for a retention amount and for co-insurance.

(b) No insurance under paragraph (a) may provide for any payment, other than cost of defense, to or on behalf of any director or officer:

(1) if a judgment or other final adjudication adverse to the insured director or officer establishes that his or her acts of active and deliberate dishonesty were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled, or

(2) in relation to any risk the insurance of which is prohibited under the insurance law of this state.

(c) Insurance under any or all subparagraphs of paragraph (a) may be included in a single contract or supplement thereto. Retrospective rated contracts are prohibited.

(d) The corporation shall, within the time and to the persons provided in paragraph (c) of section 725 (Other provisions affecting indemnification of directors and officers), mail a statement in respect to any insurance it has purchased or renewed under this section, specifying the insurance carrier, date of the contract, cost of the insurance, corporate positions insured, and a statement explaining all sums, not previously reported in a statement to members, paid under any indemnification insurance contract. Notwithstanding any other provision of law, a cemetery corporation or a religious corporation having members which purchases or renews any insurance under this section after the effective date of the act which added this sentence to this paragraph, which corporation had two hundred fifty or more interments in the calendar year preceding such purchase or renewal, shall mail the statement required by this section to every person to whom a care notice or solicitation for services has been sent during such calendar year and to every person to whom a notice of annual meeting was mailed during such calendar year, but in no event to less than ten per centum of the lot owners of record during such calendar year. Such corporation shall not be required to mail such statement during any subsequent year, unless such corporation elects to mail notices of annual meeting to its members in which event the statement shall be enclosed as provided in clause (iii) of paragraph (c)(3) of section 725 (Other provisions affecting indemnification of directors and officers). A corporation having less than two hundred fifty interments in the calendar year preceding such purchase or renewal shall not be required to mail such statement unless such corporation elects to mail notices of annual meeting to its members in which event the statement shall be enclosed as provided in clause (iii) of paragraph (c)(3) of section 725 (Other provisions affecting indemnification of directors and officers).

(e) This section is the public policy of this state to spread the risk of corporate management, notwithstanding any other general or special law of this state or of any other jurisdiction, including the federal government.

*NY CLS N-PCL § 727 (2006)*

§ 727. [Renumbered]

NY CLS N-PCL § 801 (2006)

§ 801. Right to amend certificate of incorporation

(a) A corporation may amend its certificate of incorporation, from time to time, in any and as many respects as may be desired, if such amendment contains only such provisions as might be lawfully contained in an original certificate of incorporation filed at the time of making such amendment.

No amendment to a certificate of incorporation shall be adopted the effect of which would be to use any assets received for specific purposes in a manner inconsistent with such purposes. (b) In particular, and without limitation upon such general power of amendment, a corporation may amend its certificate of incorporation, from time to time, so as:

(1) To change its corporate name.

(2) To enlarge, limit or otherwise change its corporate purposes.

To specify, change or revoke the voting rights of its directors or members or of any class of members.

(4) To specify or change the location of the office of the corporation.

(5) To specify or change the post office address to which the secretary of state shall mail a copy of any process against the corporation served upon the secretary of state.

(6) To make, revoke or change the designation of a registered agent, or to specify or change the address of its registered agent.

(7) To extend the duration of the corporation or, if the corporation ceased to exist because of the expiration of the duration specified in its certificate of incorporation, to revive its existence.

(8) To authorize the issuance of capital certificates and to fix the face value and terms of such certificates and the rights and privileges of their holders and the manner in which the terms, rights and privileges may be amended and to confer upon the holders of such certificates the right to vote in the election of directors and upon any other matters as may be set forth.

(9) To strike out, change or add any provision not inconsistent with this chapter or any other statute relating to the affairs of the corporation, its rights or powers or the rights or powers of its members, directors or officers, including any provision which under this chapter is required or permitted to be set forth in the by-laws, except that a certificate of amendment may not be filed wherein the duration of the corporation shall be reduced.

(c) A corporation created by special act may accomplish any or all amendments permitted in this article, in the manner and subject to the conditions provided in this article.

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Deleted: (3) To strike out, change or add any provision not inconsistent with this chapter or any other statute relating to the affairs of the corporation, its rights or powers or the rights or powers of its members, directors or officers, including any provision required or permitted to be set forth in the by-laws.

Deleted: (4) To extend its duration, or revive its existence if it has ceased to exist because of the expiration of its period of duration. A corporation may not however reduce its corporate duration.¶  
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NY CLS N-PCL § 802 (2006)

§ 802. Authorization of amendment or change, class vote

(a) Amendment or change of the certificate of incorporation shall be authorized:

(1) If there are members entitled to vote thereon, by majority vote of such members at a meeting as provided in paragraph (c) of section 613 (Vote of members):

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(2) If there are no members entitled to vote thereon, by vote of a majority of the entire board:

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provided, however, that whenever the certificate of incorporation shall require action by the board of directors or the members by a vote of a greater number or percentage than is required by any section of this article, the provision of the certificate of incorporation requiring such greater vote shall not be altered, amended or repealed except by such greater vote.

Deleted: (b) Notwithstanding any provision in the certificate of incorporation or by-laws, members of a class shall be entitled to vote and to vote as a class upon the authorization of an amendment and, in addition to the authorization of the amendment required by paragraph (a)(1), the amendment shall be authorized by majority vote of the members of the class, when the proposed amendment would exclude or limit their right to vote on any matter except as such right may be limited by voting rights given to members of an existing class or of a new class.

(b) Alternatively, any one or more of the following changes may be authorized by or pursuant to authorization of the board:

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(1) To specify or change the location of the the corporation's office.

(2) To specify or change the post office address to which the secretary of state shall mail a copy of any process against the corporation served upon the secretary of state.

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(3) To make, revoke or change the designation of a registered agent, or to specify or change the address of its registered agent.

(c) This section shall not alter the vote required under any other section for the authorization of an amendment referred to therein, nor alter the authority of the board to authorize amendments under any other section.

#### NY CLS N-PCL § 803 (2006)

#### § 803. Class voting on amendment.

Notwithstanding any provision in the certificate of incorporation or by-laws, members of a class shall be entitled to vote and to vote as a class upon the authorization of an amendment and, in addition to the authorization of the amendment by a majority of all members entitled to vote thereon, the amendment shall be authorized by a majority of the members of the class when a proposed amendment would exclude or limit their right to vote on any matter, except as such right may be limited by voting rights given to members of any existing or new class.

#### § 804. Certificate of amendment; contents

(a) To accomplish any amendment, a certificate of amendment entitled "Certificate of amendment of the certificate of incorporation of . . . . . (name of corporation) under section 804 of the Non-Profit Corporation Law" shall be signed and delivered to the department of state. It shall set forth:

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(1) The name of the corporation and, if it has been changed, the name under which it was formed.

(2) The date its certificate of incorporation was filed by the department of state and the law under which it was formed.

Deleted: (3) That the corporation is a corporation as defined in subparagraph (a)(5) of section 102 (Definitions); the type of corporation it is under section 201 (Purposes); and if the corporate purposes are enlarged, limited or otherwise changed, the type of corporation it shall thereafter be under section 201.



(3) Each amendment effected thereby, setting forth the subject matter of each provision of the certificate of incorporation which is to be amended or eliminated and the full text of the provision or provisions, if any, which are to be substituted or added.

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(4) The manner in which the amendment of the certificate of incorporation was authorized.

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(b) Any number of amendments or changes may be included in one certificate under this section. Such certificate may also include any amendments or changes permitted by other sections and in that case the certificate shall set forth any additional statement required by any other section specifying the contents of a certificate to effect such amendment or change.

Deleted: (6) A designation of the secretary of state as agent of the corporation upon whom process against it may be served and the post office address within or without this state to which the secretary of state shall mail a copy of any process against it served upon him.¶

NY CLS N-PCL § 803-A (2006)

§ 805. Certificate of change; contents

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(a) Any one or more of the changes authorized by paragraph (b) of section 802 of this chapter may be accomplished by filing a certificate of change which shall be entitled "Certificate of change of . . . . . (name of corporation) under section 805 of the Non-Profit Corporation Law" and shall be signed and delivered to the department of state. It shall set forth:

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(1) The name of the corporation and if it has been changed, the name under which it was formed.

(2) The date its certificate of incorporation was filed by the department of state.

(3) Each change effected thereby.

(4) The manner in which the change was authorized.

(b) A certificate of change which changes only the post office address to which the secretary of state shall mail a copy of any process against the corporation served upon the secretary of state or the address of the registered agent, provided such address being changed is the address of a person, partnership or other corporation whose address, as agent, is the address to be changed or who has been designated as registered agent for such corporation, may be signed and delivered to the department of state by such agent. The certificate of change shall set forth the statements required under subparagraphs (1), (2) and (3) of paragraph (a) of this section; that a notice of the proposed change was mailed to the corporation by the party signing the certificate not less than thirty days prior to the date of delivery to the department and that such corporation has not objected thereto; and that the party signing the certificate is the agent of such corporation to whose address the secretary of state is required to mail copies of process, or the registered agent, if such be the case. A certificate signed and delivered under this paragraph shall not be deemed to effect a change of location of the office of the corporation in whose behalf such certificate is filed.

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NY CLS N-PCL § 804 (2006)

§ 806. Approvals and effect

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(a) A certificate of amendment shall ~~be delivered to the department of state. Upon the filing of a certificate of amendment by the department of state, the corporation shall submit a certified copy of such certificate within thirty days of the filing thereof to such other person or governmental body as designated in section 404 of this chapter.~~

(b) The department of state shall not file a certificate of amendment reviving the existence of a corporation if the name of the corporation being revived is not available under section 301 (Corporate name; general) for use by a corporation then being formed under this chapter, unless the certificate of amendment shall change the name to one which is available for such use.

(c) No amendment or change shall affect any existing cause of action in favor of or against the corporation, or any pending suit to which it shall be a party, or the existing rights of persons other than members; and in the event the corporate name shall be changed, no suit brought by or against the corporation under its former name shall abate for that reason.

~~(d) Amendment of purposes shall not prevent the corporation from applying assets acquired prior to such amendment to such amended purposes, provided that the corporation shall abide by any gift instrument for assets received for specific purposes prior to such amendment.~~

NY CLS N-PCL § 805 (2006)

§ ~~807~~. Restated certificate of incorporation

(a) A corporation, when authorized by the board, may restate in a single certificate the text of its certificate of incorporation without making any amendment or change thereby, except that it may include any one or more of the amendments or changes which may be authorized by the board without a vote of members under this chapter. Alternatively, a corporation may restate in a single certificate the text of its certificate of incorporation as amended thereby to effect any one or more of the amendments or changes authorized by this chapter, when authorized as required by section 802 ~~of this chapter~~.

(b) A restated certificate of incorporation, entitled "Restated certificate of incorporation of . . . . . (name of corporation) under ~~section 807 of the Non-Profit Corporation Law~~", shall be signed and delivered to the department of state. It shall set forth:

(1) The name of the corporation and, if it has been changed, the name under which it was formed.

(2) The date its certificate of incorporation was filed by the department of state.

(3) If the restated certificate restates the text of the certificate of incorporation without making any amendment or change, then a statement that the text of the certificate of incorporation is thereby restated without amendment or change to read as therein set forth in full.

(4) If the restated certificate restates the text of the certificate of incorporation as amended or changed thereby, then a statement that the certificate of incorporation is amended or changed to ef-

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Deleted: filed if the amendment adds, changes or eliminates a purpose, power or provision the inclusion of which in a certificate of incorporation requires consent or approval of a governmental body or officer or any other person or body, or if the amendment changes the name of a corporation whose certificate of incorporation had such consent or approval endorsed thereon or annexed thereto, unless such consent or approval is endorsed on or annexed to the certificate of amendment.¶

(ii) Every certificate of amendment of a corporation classified as type B or type C under section 201 (Purposes) which seeks to change or eliminate a purpose or power enumerated in the corporation's certificate of incorporation, or to add a power or purpose not enumerated therein, shall have endorsed thereon or annexed thereto the approval of a justice of the supreme court of the judicial district in which the office of the corporation is located. Ten days' written notice of the application for such approval shall be given to the attorney-general.¶

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(b) The department of state shall not file a certificate of amendment reviving the existence of a corporation unless the consent or approval of a governmental body or officer or any other person or body required to be endorsed on or annexed to the certificate of incorporation of a corporation formed for similar purposes, is attached thereto, or, if notice to the attorney-general was required prior to the filing of its certificate of incorporation, the certificate of amendment should indicate that such notice has been given as required by law.

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Deleted: (e) Notwithstanding any law to the contrary, a certificate of amendment of a corporation whose statement of purposes specifically includes the establishment or operation of a child day care center, as that term is defined in section three hundred ninety of the social services law, shall provide a certified copy of such certificate to the office of children and family services within thirty days after the filing of such certificate ¶ ... [7]

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fect one or more of the amendments or changes authorized by this chapter, specifying each such amendment or change and that the text of the certificate of incorporation is thereby restated as amended or changed to read as therein set forth in full.

(5) The manner in which the restatement of the certificate of incorporation was authorized.

(c) A restated certificate need not include statements as to the incorporator or incorporators, or the first directors.

(d) Any amendment or change under this section shall be subject to any other section, not inconsistent with this section, which would be applicable if a separate certificate were filed to effect such amendment or change.

(e) Notwithstanding that the corporation would be required by any statute to secure from any supreme court justice, governmental body or officer, or other person or body, any consent or approval to the filing of its certificate of incorporation or a certificate of amendment, such consent or approval shall not be required with respect to a restated certificate if such certificate makes no amendment and if any previously required consent or approval had been secured.

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(f) Upon filing by the department, the original certificate of incorporation shall be superseded and the restated certificate of incorporation, including any amendments and changes made thereby, shall be the certificate of incorporation of the corporation.

*NY CLS N-PCL § 901 (2006)*

§ 901. Power of merger or consolidation

(a) Two or more domestic corporations or one of more domestic corporations and one or more foreign corporations may, as provided in this chapter:

(1) Merge into a single corporation which shall be one of the constituent corporations; or

(2) Consolidate into a single corporation which shall be a new corporation to be formed pursuant to the consolidation.

(b) Whenever used in this article:

(1) "Merger" means a procedure of the character described in subparagraph (a)(1).

(2) "Consolidation" means a procedure of the character described in subparagraph (a)(2).

(3) "Constituent corporation" means an existing domestic or foreign corporation that is participating in the merger or consolidation with one or more other corporations.

(4) "Surviving corporation" means the constituent corporation into which one or more other constituent corporations are merged.

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(5) "Consolidated corporation" means the new corporation into which two or more constituent corporations are consolidated.

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NY CLS N-PCL § 902 (2006)

§ 902. Plan of merger or consolidation

(a) The board of each constituent corporation proposing to participate in a merger or consolidation under section 901 (Power of merger or consolidation) shall adopt a plan of merger or consolidation, setting forth:

(1) The name of each constituent corporation and if the name of any of them has been changed, the name under which it was formed, and the name of the surviving corporation, or the name or the method of determining it, of the consolidated corporation.

(2) As to each constituent corporation, a description of the membership and holders of any certificates evidencing capital contributions, including their number, classification, and voting rights, if any.

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(3) The terms and conditions of the proposed merger or consolidation, including the manner and basis of converting membership or other interest in each constituent corporation into membership or other interest in the surviving or consolidated corporation, or the cash or other consideration to be paid or delivered in exchange for membership or other interest in each constituent corporation, or a combination thereof.

(4) In case of merger, a statement of any amendments or changes in the certificate of incorporation of the surviving corporation to be effected by such merger; in case of consolidation, all statements required to be included in a certificate of incorporation for a corporation formed under this chapter, except statements as to facts not available at the time the plan of consolidation is adopted by the board.

(5) In case of a merger or consolidation under section 906 (Merger or consolidation of domestic and foreign corporations), a statement of any agreements required by subparagraph (2)(D) of paragraph (d) thereof. (6) Such other provisions with respect to the proposed merger or consolidation as the board considers necessary or desirable.

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NY CLS N-PCL § 903 (2006)

§ 903. Approval of plan

(a) The plan of merger or consolidation of each domestic constituent corporation shall be approved in accordance with the following:

(1) If the merging or consolidating corporation has no members entitled to vote thereon, upon adoption by the board of such corporation pursuant to section 902 (Plan of merger or consolidation).

(2) If the merging or consolidating corporation has members entitled to vote thereon, after adoption by the board of such corporation, upon adoption at a meeting of the members by two-thirds vote as provided in paragraph (c) of section 613 (Vote of members). Notice of meeting shall be given to each member whether or not entitled to vote. A copy of the plan of merger or consolidation or an outline of the material features of the plan shall accompany such notice.

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Deleted: (2) The plan of merger or consolidation shall be approved at a meeting of the members by two-thirds vote as provided in paragraph (c) of section 613 (Vote of members).¶  
(3) If any merging or consolidating corporation has no members entitled to vote thereon, a plan of merger or consolidation shall be deemed approved by the members of the corporation when it is adopted by the board of such corporation pursuant to section 902 (Plan of merger or consolidation).¶

(b) Notwithstanding authorization as provided herein, at any time prior to the filing of the certificate of merger or consolidation, the plan of merger or consolidation may be abandoned pursuant to a provision for such abandonment, if any, contained in the plan of merger or consolidation.

*NY CLS N-PCL § 904 (2006)*

§ 904. Certificate of merger or consolidation; contents

(a) After adoption of the plan of merger or consolidation unless the merger or consolidation is abandoned in accordance with paragraph (b) of section 903 (Approval of plan) a certificate of merger or consolidation, entitled "Certificate of merger (or consolidation) of . . . . . and . . . . . into (names of corporations) under *section 904 of the Non-Profit Corporation Law*," shall be executed on behalf of each constituent corporation and delivered to the department of state. It shall set forth:

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(1) The statements required by subparagraphs (a)(1), (2), (3) and (4) of section 902 (Plan of merger or consolidation).

(2) The effective date of the merger or consolidation if other than the date of filing of the certificate of merger or consolidation by the department of state.

(3) In the case of consolidation, any statement required to be included in a certificate of incorporation formed under this chapter but which was omitted under subparagraph (a)(4) of section 902.

(4) The date when the certificate of incorporation of each constituent corporation was filed by the department of state or, in the case of constituent corporations created by special law, the chapter number and year of passage of such law.

(5) The manner in which the merger or consolidation was authorized with respect to each constituent corporation.

(b) The surviving or consolidated corporation shall thereafter cause a copy of such certificate certified by the department of state, to be filed in the office of the clerk of each county in which the office of a constituent corporation, other than the surviving corporation, is located, and in the office of the official who is the recording officer of each county in this state in which real property of a constituent corporation, other than the surviving corporation, is situated.

*NY CLS N-PCL § 905 (2006)*

§ 905. Effect of merger or consolidation

(a) Upon the filing of the certificate of merger or consolidation by the department of state or on such date subsequent thereto, not to exceed thirty days, as shall be set forth in such certificate, the merger or consolidation shall be effected.

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(b) When such merger or consolidation has been effected:

(1) Such surviving or consolidated corporation shall thereafter, consistently with its certificate of incorporation as altered or established by the merger or consolidation, possess all the rights, privileges, immunities, powers and purposes of each of the constituent corporations.

(2) All the property, real and personal, including causes of action and every other asset of each of the constituent corporations, shall vest in such surviving or consolidated corporation without further act or deed, except as otherwise provided in paragraph (b) of section 907 (Approval by the Supreme Court). Except as the court may otherwise direct, ~~any disposition made in a will, or in any other instrument executed under the laws of this state, and taking effect after such merger or consolidation, to or for the benefit of any of the constituent corporations shall inure to the benefit of the surviving or consolidated corporation.~~ (3) ~~The surviving or consolidated corporation shall assume and be liable for all the liabilities, obligations and penalties of each of the constituent corporations. No liability or obligation due or to become due, claim or demand for any cause existing against any such corporation, or any member, officer or director thereof, shall be released or impaired by such merger or consolidation. No action or proceeding, whether civil or criminal, then pending by or against any such constituent corporation, or any member, officer or director thereof, shall abate or be discontinued by such merger or consolidation, but may be enforced, prosecuted, settled or~~ ~~com-~~ promised as if such merger or consolidation had not occurred, or such surviving or consolidated corporation may be substituted in such action or special proceeding in place of any constituent corporation. Except as the court may otherwise direct, any obligation with respect to any assets received for specific purposes shall be deemed to continue in and through the surviving or consolidated corporation.

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(4) In the case of a merger, the certificate of incorporation of the surviving corporation shall be automatically amended to the extent, if any, that changes in its certificate of incorporation are set forth in the plan of merger; and, in the case of a consolidation, the statements set forth in the certificate of consolidation and which are required or permitted to be set forth in a certificate of incorporation of a corporation formed under this chapter shall be its certificate of incorporation.

*NY CLS N-PCL § 906 (2006)*

§ 906. Merger or consolidation of domestic and foreign corporations

(a) One or more foreign corporations and one or more domestic corporations may be merged or consolidated into a corporation of this state or of another jurisdiction, if such merger or consolidation is permitted by the laws of the jurisdiction under which each such foreign corporation is incorporated. With respect to such merger or consolidation, any reference in paragraph (b) of section 901 (Power of merger or consolidation) to a corporation shall, unless the context otherwise requires, include both domestic and foreign corporations.

(b) With respect to procedure, including any requirement of approval by members, each domestic corporation shall comply with the provisions of this chapter relating to merger or consolidation of domestic corporations, and each foreign corporation shall comply with the applicable provisions of the law of the jurisdiction under which it is incorporated.

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(c) If the surviving or consolidated corporation is, or is to be, a domestic corporation, a certificate of merger or consolidation shall be signed, verified and delivered to the department of state as provided in section 904 (Certificate of merger or consolidation; contents). In addition to the matters specified in such section, the certificate shall set forth as to each constituent foreign corporation the jurisdiction and date of its incorporation and the date when its application for authority to conduct activities in this state was filed by the department of state, and its fictitious name used in this state pursuant to article thirteen of this chapter, if applicable, or, if no such application has been filed, a statement to such effect.

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(d) If the surviving or consolidated corporation is, or is to be, formed under the law of any jurisdiction other than this state:

(1) It shall comply with the provisions of this chapter relating to foreign corporations if it is to conduct activities in this state.

(2) It shall deliver to the department of state a certificate, entitled "Certificate of merger (or consolidation) of . . . . . and . . . . . into . . . . . (names of corporations) under section 906 of the *Non-Profit Corporation Law*", which shall be signed on behalf of each constituent domestic and foreign corporation. It shall set forth:

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(A) The statements required by subparagraphs (a)(1), (2), (3), (4) and (5) of section 902 (Plan of merger or consolidation).

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(B) The jurisdiction and date of incorporation of the surviving or consolidated foreign corporation, the date when its application for authority to conduct activities in this state was filed by the department of state, and its fictitious name used in this state pursuant to article thirteen of this chapter, if applicable, or, if no such application has been filed, a statement to such effect and that it is not to conduct activities in this state until an application for such authority shall have been filed by such department.

(C) The date when the certificate of incorporation of each constituent domestic corporation was filed by the department of state and the jurisdiction and date of incorporation of each constituent foreign corporation, other than the surviving or consolidated foreign corporation, and; in the case of each such corporation authorized to conduct activities in this state, the date when its application for authority was filed by the department of state.

(D) An agreement that the surviving or consolidated foreign corporation may be served with process in this state in any action or special proceeding for the enforcement of any liability or obligation of any domestic corporation or of any foreign corporation, previously amenable to suit in this state, which is a constituent corporation in such merger or consolidation, and an agreement that the surviving or consolidated foreign corporation may be sued in this state in respect of any property transferred or conveyed to it as provided in section 907 (Approval by the supreme court), or the use made of such property, or any transaction in connection therewith.

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(E) A designation of the secretary of state as its agent upon whom process against it may be served in the manner set forth in paragraph (b) of section 306 (Service of process), in any action or special proceeding described in subparagraph (D) and a post office address, within or without this state, to which the secretary of state shall mail a copy of the process in such action.

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(F) The manner in which the plan of merger or consolidation was approved with respect to each constituent domestic corporation and that the merger or consolidation is permitted by the laws of the jurisdiction of each constituent foreign corporation and is in compliance therewith.

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(G) The effective date of the merger or consolidation if other than the date of filing of the certificate of merger or consolidation by the department of state.

(e) Upon the filing of the certificate of merger or consolidation by the department of state or on such date subsequent thereto, not to exceed ninety days as shall be set forth in such certificate, the merger or consolidation shall be effected.

(f) The surviving or consolidated domestic or foreign corporation shall thereafter cause a copy of such certificate, certified by the department of state, to be filed in the office of the clerk of each county in which the office of a constituent corporation, other than the surviving corporation, is located, and in the office of the official who is the recording officer of each county in this state in which real property of a constituent corporation, other than the surviving corporation, is situated.

(g) If the surviving or consolidated corporation is, or is to be, formed under the law of this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations under section 905 (Effect of merger or consolidation). If the surviving or consolidated corporation is, or is to be, incorporated under the law of any jurisdiction other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, except in so far as the law of such other jurisdiction provides otherwise.

*NY CLS N-PCL § 907 (2006)*

§ 907. Approval by the supreme court

(a) No certificate shall be filed pursuant to section 904 (Certificate of merger or consolidation; contents), section 906 (Merger or consolidation of domestic and foreign corporations) or section 908 (Merger or consolidation of business and non-profit corporations) with respect to a domestic constituent corporation that is organized for charitable purposes and that holds assets received for specific purposes until an order approving the plan of merger or consolidation and authorizing the filing of the certificate has been made by the supreme court, as provided in this section. A certified copy of such order shall be annexed to the certificate of merger or consolidation. Application for the order may be made in the judicial district in which the principal office of the surviving or consolidated corporation is to be located, or in which the office of one of the domestic constituent corporations is located. The application shall be made by domestic constituent corporation and shall set forth by affidavit (1) the plan of merger or consolidation, (2) the approval required by section 903 (Approval of plan) or paragraph (b) of section 906 (Merger or consolidation of domestic and foreign corporations) for each constituent corporation, and the manner in which they are held.

(b) Upon the filing of the application the court shall fix a time for hearing thereof and shall direct that notice thereof be given to such persons as the court may deem interested, including the attorney general, any governmental body or officer and any other person or body whose consent or approval is required by section 909 (Consent to filing), in such form and manner as the court may prescribe, which persons may appear and show cause why the application should not be granted.

(c) If the court shall find that any of the assets of a domestic constituent corporation, received for specific purposes, will be adversely affected by the merger or consolidation, it may approve the

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Deleted: Where any constituent corporation or the consolidated corporation is, or would be if formed under this chapter, a Type B or a Type C corporation under section 201 (Purposes) of this chapter, n

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Deleted: (3) the objects and purposes of each such corporation to be promoted by the consolidation, (4) a statement of all property,

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transfer or conveyance of the subject assets, to one or more other domestic or foreign corporations or organizations engaged in substantially similar activities.

**Deleted:** , in its discretion, direct that such assets be transferred or conveyed to the surviving or consolidated corporation subject to such purpose or use, or that such assets be transferred or conveyed to the surviving or consolidated corporation or

NY CLS N-PCL § 908 (2006)

§ 908. Merger or consolidation of business and non-profit corporations

**Deleted:** , upon an express trust the terms of which shall be approved by the court

(a) One or more domestic or foreign corporations which is, or would be if formed under this chapter, a corporation organized and operated under section 201 (Purposes) may be merged or consolidated into a domestic or foreign corporation which is, or would be if formed under the laws of this state, a corporation formed under the business corporation law of this state if such merger or consolidation is not contrary to the law of the state of incorporation of any constituent corporation. With respect to such merger or consolidation, any reference in paragraph (b) of section 901 of this article or paragraph (b) of section 901 of the business corporation law to a corporation shall, unless the context otherwise requires, include both domestic and foreign corporations.

**Deleted:** (d) If the court shall find that the interests of non-consenting members are or may be substantially prejudiced by the proposed merger or consolidation, the court may disapprove the plan or may direct a modification thereof. In the event of a modification, if the court shall find that the interests of any members may be substantially prejudiced by the proposed merger or consolidation as modified, the court shall direct that the modified plan be submitted to vote of the members of the constituent corporations, or if the court shall find that there is not such substantial prejudice, it shall approve the agreement as so modified without further approval by the members. If the court, upon directing a modification of the plan of merger or consolidation, shall direct that a further approval be obtained from members of the constituent corporations or any of them, such further approval shall be obtained in the manner specified in section 903 (Approval of plan) or section 906(b) (Merger or consolidation of domestic and foreign corporations) of this chapter.¶

(b) With respect to procedure including authorization by shareholders or approval by members, each domestic business corporation shall comply with the business corporation law, each domestic non-profit corporation shall comply with the provisions of this chapter and each foreign corporation shall comply with the applicable provisions of the law of the jurisdiction under which it is incorporated.

¶  
(e) If it shall appear, to the satisfaction of the court, that the provisions of this section have been complied with, and that the interests of the constituent corporations and the public interest will not be adversely affected by the merger or consolidation, it shall approve the merger or consolidation upon such terms and conditions as it may prescribe.¶

(c) The plan of merger or consolidation shall set forth all matters required by section 902 of the business corporation law or section 902 of this chapter and the terms and conditions of the proposed merger or consolidation, including the manner and basis of converting shares, membership or other interest in each constituent corporation into shares, bonds or other securities of the surviving or consolidated corporation, or the cash or other consideration to be paid or delivered in exchange for shares, membership or other interest in each constituent corporation, or a combination thereof.

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(d) After adoption of the plan of merger or consolidation by the board and members or shareholders of each constituent corporation, unless the merger or consolidation is abandoned in accordance with paragraph (b) of section 903 (Approval by members) and paragraph (b) of section 903 (Authorization by shareholders) of the business corporation law, a certificate of merger or consolidation, entitled "Certificate of merger (or consolidation) of . . . . . and . . . . . into . . . . . (names of corporations) under section 908 of the Non-Profit Corporation Law", shall be signed on behalf of each constituent corporation and delivered to the department of state.

(1) If the surviving or consolidated corporation is, or is to be, a domestic corporation such certificate shall set forth the statements required by section 904(a) of the business corporation law or section 904(a) of this chapter and, as to each constituent foreign corporation the jurisdiction and date of its incorporation and the date when its application for authority to conduct activities or do business in this state was filed by the department of state or, if no such application has been filed, a statement to such effect.

(2) If the surviving or consolidated corporation is, or is to be formed under the law of any jurisdiction other than this state such certificate shall set forth:

(A) The statements required by subparagraphs (a)(1) and (2) of *section 902 of the business corporation law* or subparagraphs (a)(1) and (2) of section 902 (Plan of merger or consolidation) of this chapter, and the manner in which the merger or consolidation was authorized with respect to each constituent domestic corporation.

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(B) The jurisdiction and date of incorporation of the surviving or consolidated foreign corporation, the date when its application for authority to do business in this state was filed by the department of state or, if no such application has been filed, a statement to such effect and that it is not to do business in this state until an application for such authority shall have been filed by such department.

(C) The date when the certificate of incorporation of each constituent domestic corporation was filed by the department of state and the jurisdiction and date of incorporation of each constituent foreign corporation, other than the surviving or consolidated foreign corporation, and, in the case of each such corporation authorized to do business or conduct activities in this state, the date when its application for authority was filed by the department of state.

(D) An agreement that the surviving or consolidated foreign corporation may be served with process in this state in any action or special proceeding for the enforcement of any liability or obligation of any domestic corporation or of any foreign corporation, previously amenable to suit in this state, which is a constituent corporation in such merger or consolidation, and for the enforcement, as provided in the business corporation law, of the rights of shareholders of any constituent domestic business corporation to receive payment for their shares against the surviving or consolidated corporation.

(E) An agreement that, subject to the provisions of *section 623 of the business corporation law*, the surviving or consolidated foreign corporation will promptly pay to the shareholders of each constituent domestic business corporation the amount, if any, to which they shall be entitled under the provisions of the business corporation law relating to the right of shareholders to receive payment for their shares.

(F) A designation of the secretary of state as his agent upon whom process against it may be served in the manner set forth in paragraph (b) of section 306 (Service of process), in any action or special proceeding described in subparagraph (D) and a post office address, within or without the state, to which the secretary of state shall mail a copy of the process in such action or special proceeding.

(e) The department of state shall not file a certificate delivered to it under subparagraph (d)(2) unless the consent of the state tax commission to the merger or consolidation is attached thereto.

(f) Upon the filing of the certificate of merger or consolidation by the department of state or on such dates subsequent thereto, not to exceed thirty days, as shall be set forth in such certificate, the merger or consolidation shall be effected.

Deleted: Where any constituent corporation is, or would be if formed under this chapter, a Type C corporation under section 201 (Purposes), no certificate shall be filed pursuant to this section until an order approving the plan of merger or consolidation and authorizing the filing of the certificate has been made by the supreme court, as provided in section 907 (Approval by the supreme court).¶  
(g)

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(g) The surviving or consolidated domestic or foreign corporation shall thereafter cause a copy of such certificate, certified by the department of state, to be filed in the office of the clerk of each county in which the office of a constituent corporation, other than the surviving corporation, is located, and in the office of the official who is the recording officer of each county in this state in which real property of a constituent corporation, other than the surviving corporation, is situated.

(h) When such merger or consolidation has been effected:

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(A) If the surviving or consolidated corporation is, or is to be, formed under the law of this state, it shall be subject to the business corporation law and the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations under section 906 (Effect of merger or consolidation) of the business corporation law, except that in subparagraph (b)(3) of such section the word "shareholder" shall be read to include the word "member" as the latter is defined in this chapter.

(B) If the surviving or consolidated corporation is, or is to be, incorporated under the law of any jurisdiction other than this state, the effect of such merger or consolidation shall be as provided in subparagraph (A), except insofar as the law of such other jurisdiction provides otherwise.

*NY CLS N-PCL § 909 (2006)*

§ 909. Filing notices, approvals or consents

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If the purposes of any constituent or consolidated corporation would require notice to, or the approval or consent of, any governmental body or officer or any other person or body under section 404 (Notices, approvals and consents), then (i) such corporation shall provide a certified copy of the certificate of merger or consolidation, within thirty days after the filing of such certificate, to each governmental body or officer or other person or body to whom or to which any such notice is required and (ii) no certificate of merger or consolidation shall be filed pursuant to this article unless any such approval or consent is endorsed thereon or annexed thereto. A corporation whose statement of purposes specifically includes the establishment or operation of a child day care center, as that term is defined in section three hundred ninety of the social services law, shall provide a certified copy of any certificate of merger or consolidation involving such corporation to the office of children and family services within thirty days after the filing of such merger or consolidation with the department of state.

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*NY CLS N-PCL § 910 (2006)*

§ 910. Merger or consolidation of corporations formed under the religious corporations law and certain other corporations formed for religious purposes

(a) One or more corporations formed under the religious corporations law and one or more corporations formed for religious purposes to which the non-profit corporation law applies by virtue of paragraph (a) of section one hundred three of this chapter may be merged or consolidated pursuant to section nine hundred one, with the effect provided in section nine hundred one and paragraph (b) of section nine hundred five of this chapter.

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(b) Each corporation which is a party to such merger or consolidation shall comply with the provisions of this section and of sections 902, 903, 904 and 907 of this chapter and, if and to the extent applicable, sections 906 and 909 of this chapter.

(c) If the surviving corporation or consolidated corporation is a domestic or authorized foreign corporation not formed under the religious corporations law, then, a certificate of merger or consolidation shall be filed with the department of state, and the surviving or consolidated corporation shall thereafter cause a copy of such certificate, certified by the department of state, to be filed in the office of the clerk of the county in which each constituent corporation other than the surviving corpo-

ration is located, the county in which the certificate of incorporation of each constituent domestic corporation or application for authority of each constituent authorized foreign corporation, other than the surviving corporation, is filed and the office of the official who is the recording officer of such county in this state in which real property of a constituent corporation other than the surviving corporation, is located.

(d) If the surviving corporation or consolidated corporation is a corporation formed under the religious corporations law, then, the certificate of merger or consolidation shall be filed with the office of the official in which the certificate of incorporation of the surviving or consolidated corporation was filed, and the surviving or consolidated corporation shall thereafter cause a copy of such certificate, certified by such office, to be filed in the office in which the certificate of incorporation of each constituent domestic corporation or application for authority of each authorized foreign corporation other than the surviving corporation was filed, and in the office of the official who is the recording officer of each county in this state in which real property of a constituent corporation, other than the surviving or consolidated corporation, is located.

(e) Such merger or consolidation shall become effective with respect to each constituent corporation upon the filing of a certificate of merger or consolidation or certified copy thereof pursuant to paragraph (c) or paragraph (d) of this section with the appropriate state or county official therein specified. With respect to the surviving corporation, such merger may become effective on such date subsequent thereto, not to exceed sixty days, as shall be set forth in such certificate. The filing of a certified copy with the office of a recording officer of a county in which real property is located shall not be a condition precedent to such merger or consolidation becoming effective.

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*NY CLS N-PCL § 1001 (2006)*

§ 1001. Plan of dissolution and distribution of assets

(a) [Until April 9, 2006, § 1001 reads as set out below:] The board shall adopt a plan for the dissolution of the corporation and the distribution of its assets. Such plan shall implement any provision in the certificate of incorporation prescribing the distributive rights of members.

(b) If the corporation is a Type B or Type C corporation and has no assets to distribute at the time of dissolution, the plan of dissolution shall include a statement to that effect, and a certified copy of such plan shall be filed with the attorney general within ten days after its adoption by the board.

(a) [Eff April 9, 2006, § 1001 reads as set out below:] The board shall adopt a plan for the dissolution of the corporation and the distribution of its assets. Such plan shall implement any provision in the certificate of incorporation prescribing the distributive rights of members.

(b) If the corporation is organized for charitable purposes and holds assets received for specific purposes, the plan of dissolution shall include a statement to that effect.

Deleted: is a Type B , C or D corporation and has no assets to distribute and no liabilities at the time of dissolution

(c) If the corporation is organized for charitable purposes and has no assets to distribute, other than a reserve not to exceed twenty-five thousand dollars for the purpose of paying ordinary and neces-

Deleted: a Type B, C or D corporation

sary expenses of winding up its affairs including attorney and accountant fees, and liabilities not in excess of ten thousand dollars at the time of adoption of the plan of dissolution, the plan of dissolution shall include a statement to that effect.

(d) If the corporation has assets to distribute or liabilities, the plan of dissolution shall contain:

(1) a description with reasonable certainty of the assets of the corporation and their fair value, and the total amount of debts and other liabilities incurred or estimated by the corporation, including the total amount of any accounting and legal fees incurred or estimated, in connection with the dissolution procedure.

(2) a statement as to whether any gifts or other assets are legally required to be used for a particular purpose.

(3) if there are assets received and held by the corporation for a specific purpose, a statement that the assets owned by the corporation, subject to any unpaid liabilities of the corporation, shall be distributed as required by any gift instrument or to a charitable organization or organizations exempt from taxation pursuant to federal and state laws and engaged in activities substantially similar to those of the dissolved corporation. Each such recipient organization shall be identified and the governing instrument and amendments thereto of each of the proposed recipient organizations shall be annexed to such statement, along with the financial reports of each recipient organization for the last three years and a sworn affidavit from a director and officer of each recipient organization stating the purposes of the organization, and that it is currently exempt from federal income taxation.

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(4) if any of the assets of the corporation are to be distributed to a recipient for a specific purpose, an agreement by the recipient to apply the assets received only for such purpose shall be included.

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#### *NY CLS N-PCL § 1002 (2006)*

#### § 1002. Authorization of plan

(a) Upon adopting a plan of dissolution and distribution of assets, the board shall submit it to a vote of the members, if any, and such plan shall be approved at a meeting of members by two-thirds vote as provided in paragraph (c) of section 613 (Vote of members); provided, however, that if the corporation is organized for charitable purposes, other than a corporation incorporated pursuant to article 15 (Public cemetery corporations), and has no assets to distribute, other than a reserve not to exceed twenty-five thousand dollars for the purpose of paying ordinary and necessary expenses of winding up its affairs including attorney and accountant fees, and liabilities not in excess of ten thousand dollars at the time of adoption of the plan of dissolution, the vote required by the corporation's board of directors for adoption of the plan of dissolution of such a corporation or by the corporation's members for the authorization thereof shall be:

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(1) In the case of a vote by the board of directors: (i) the number of directors required under the certificate of incorporation, by-laws, this chapter and any other applicable law; or

(ii) if the number of directors actually holding office as such at the time of the vote to adopt the plan is less than the number required to constitute a quorum of directors under the certificate of



incorporation, the by-laws, this chapter or any other applicable law, the remaining directors unanimously;

(2) In the case of a vote by the members, (i) the number of members required under the certificate of incorporation, by-laws, this chapter and any other applicable law; or (ii) by the vote of members authorized by an order of the supreme court pursuant to section 608 of this chapter permitting the corporation to dispense with the applicable quorum requirement.

Notice of a special or regular meeting of the board of directors or of the members entitled to vote on adoption and authorization or approval of the plan of dissolution shall be sent to all the directors and members of record entitled to vote. Unless otherwise directed by order of the supreme court pursuant to section 608 of this chapter, the notice shall be sent by certified mail, return receipt requested, to the last known address of record of each director and member not fewer than thirty, and not more than sixty days before the date of each meeting provided, however, that if the last known address of record of any director or member is not within the United States, the notice to such director shall be sent by any other reasonable means..

(b) If there are no members entitled to vote on the dissolution of the corporation, the plan of dissolution and distribution of assets shall be deemed authorized upon its adoption by the board.

(c) Whenever a statute creating, or authorizing the formation of, a corporation requires notice to or approval by a governmental body or officer for the formation of such corporation, (i) such corporation shall provide a certified copy of the certificate of merger or consolidation, within thirty days after the filing of such certificate, to each governmental body or officer or other person or body to whom or to which any such notice was required for the formation of such corporation and (ii) dissolution shall not be authorized without the approval of such body or officer from whom such approval was required for the formation of such corporation. (d) The plan of dissolution and distribution of assets shall have annexed thereto the approval of a justice of the supreme court in the judicial district in which the office of the corporation is located in the case of a corporation that holds assets received for specific purposes, except that no such approval shall be required with respect to the plan of dissolution of a corporation, other than a corporation incorporated pursuant to article 15 (Public cemetery corporations), which has no assets to distribute at the time of dissolution, other than a reserve not to exceed twenty-five thousand dollars for the purpose of paying ordinary and necessary expenses of winding up its affairs including attorney and accountant fees, and liabilities not in excess of ten thousand dollars, and which has complied with the requirements of section 1001 (Plan of dissolution and distribution of assets) and this section applicable to such a corporation. Application to the supreme court for an order for such approval shall be by verified petition, with the plan of dissolution and distribution of assets and certified copies of the consents prescribed by this section annexed thereto, and upon ten days written notice to the attorney general accompanied by copies of such petition, plan and consents. In such case where approval of a justice of the supreme court is not required for a corporation, a copy of such plan certified under penalties of perjury shall be filed with the attorney general within ten days after its authorization.

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(e) Notwithstanding authorization as provided herein, at any time prior to the filing of the certificate of dissolution, the plan of dissolution and distribution of assets may be abandoned pursuant to a provision for such abandonment, if any, contained in the plan of dissolution and distribution of assets.



§ 1002-a. Carrying out the plan of dissolution and distribution of assets

Prior to filing the certificate of dissolution with the department of state, a corporation, as applicable, shall:

(a) Carry out the plan of dissolution and distribution of assets, pay its liabilities and distribute its assets in accordance therewith within two hundred seventy days from the date the plan of dissolution and distribution of assets shall have been (1) authorized as provided in section 1002 of this article (Authorization of plan), (2) approved by any governmental body or officer whose approval is required pursuant to paragraph (c) of section 1002 of this article, and (3) approved by a justice of the supreme court, if such approval is required pursuant to paragraph (d) of section 1002 of this article, or filed with the attorney general, if such filing is required pursuant to paragraph (d) of section 1002 of this article. Evidence of the disposition of its assets and payment of its liabilities pursuant to the plan of dissolution and distribution of assets shall be submitted by the corporation to the attorney general and any other governmental body or officer, as required under applicable laws. If the plan of dissolution and distribution of assets cannot be carried out within the prescribed time, the attorney general may upon good cause shown extend such time, or any extended period of time, by not fewer than thirty days nor more than one year;

(b) Pursuant to the plan of dissolution and distribution of assets fulfill or discharge its contracts, collect and sell its assets for cash at public or private sale, discharge or pay its liabilities, and do all other acts appropriate to liquidate its business;

(c) Distribute the assets of the corporation that remain after paying or adequately providing for the payment of its liabilities, in the following manner:

(1) assets received and held by the corporation for a specific purpose, shall be distributed to one or more domestic or foreign corporations or other organizations engaged in activities substantially similar to those of the dissolved corporation pursuant to the plan of dissolution and distribution or, if applicable, as ordered by the court to which such plan is submitted for approval under section 1002 (Authorization of plan). Any disposition of assets contained in a will or other instrument, in trust or otherwise, made before or after the dissolution, to or for the benefit of any corporation so dissolved shall inure to or for the benefit of the corporation or organization acquiring such assets of the dissolved corporation as provided in this section, and so far as is necessary for that purpose the corporation or organization acquiring such disposition shall be deemed a successor to the dissolved corporation with respect to such assets; provided, however, that such disposition shall be devoted by the acquiring corporation or organization to the purposes intended by the testator, donor or grantor.

(2) assets other than those described by subparagraph one of this paragraph, if any, shall be distributed in accordance with the specifications of the plan of dissolution and distribution of assets or, to the extent that the certificate of incorporation prescribes the distributive rights of members, or of any class or classes of members, as provided in such certificate;

(d) Within six months from the date fixed for the payment of the final liquidating distribution pursuant to paragraph (a) of this section, pay any assets distributable to a creditor or member who is unknown or cannot be found, to the state comptroller pursuant to the abandoned property law;

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(e) Distribute assets that are not subject to subparagraph one of paragraph (c) of this section under a plan of distribution, in accordance with the following order of priorities:

(1) holders of capital certificates.

(2) members, if permitted by law.

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(2) holders

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*NY CLS N-PCL § 1003 (2006)*

§ 1003. Certificate of dissolution; contents; approval

(a) After the plan of dissolution and distribution of assets has been adopted, authorized, approved and carried out pursuant to the terms of the plan within the time period set forth pursuant to section 1002-a (Carrying out the plan of dissolution and distribution of assets), a certificate of dissolution, entitled "Certificate of dissolution of . . . . . (name of corporation) under *section 1003 of the Non-Profit Corporation Law*" shall be signed and, if required pursuant to subparagraph two of paragraph (b) of this section, after the attorney general has affixed thereon his or her consent to the dissolution, such certificate of dissolution shall be delivered to the department of state. It shall set forth:

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(1) The name of the corporation and, if its name has been changed, the name under which it was formed.

(2) The date its certificate of incorporation was filed by the department of state.

(3) The name and address of each of its officers and directors.

(4) A statement as to whether or not the corporation holds assets for specific purposes at the time of authorization of its plan of dissolution and distribution of assets as provided in section 1002 of this article (Authorization of plan).

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(5) That the corporation elects to dissolve.

(6) The manner in which the dissolution was authorized. If the dissolution of the corporation is authorized by a vote of the directors and/or members of the corporation that is less than that ordinarily required by the certificate of incorporation, the by-laws, this chapter or any other applicable law, as permitted by paragraph (a) of section 1002 (Authorization of plan), then the certificate of dissolution shall so state.

Deleted: (8) A statement that prior to delivery of such certificate of dissolution to the department of state for filing, the plan of dissolution and distribution of assets has been approved by a justice of the supreme court, if such approval is required. A copy of the order shall be attached to the certificate dissolution. In the case of a corporation, other than a corporation incorporated pursuant to article 15 (Public cemetery corporations), having no assets to distribute, other than a reserve not to exceed twenty-five thousand dollars for the purpose of paying ordinary and necessary expenses of winding up its affairs including attorney and accountant fees, and liabilities not in excess of ten thousand dollars at the time of dissolution, a statement that a copy of the plan of dissolution which contains the statement prescribed by paragraph (b) of section 1001 (Plan of dissolution and distribution of assets) has been duly filed with the attorney general if required.¶

(b) Such certificate of dissolution shall have indorsed thereon or annexed thereto the approval of the dissolution:

(1) By a governmental body or officer, if such approval is required. A corporation whose statement of purposes specifically includes the establishment or operation of a child day care center, as that term is defined in section three hundred ninety of the social services law, shall provide a certified copy of any certificate of dissolution involving such corporation to the office of children and family services within thirty days after the filing of such dissolution with the department of state.

(2) By the attorney general in the case of a corporation that is organized for charitable purposes, and holds assets at the time of dissolution received for specific purposes.

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(c) The application to the attorney general for approval of the certificate of dissolution pursuant to paragraph (b) of this section shall be by verified petition and shall include a final financial report showing disposition of all of the corporation's assets and liabilities, the requisite governmental approvals and the appropriate fees, if any, accompanied by the certificate of dissolution.

*NY CLS N-PCL § 1004 (2006)*

§ 1004. Certificate of dissolution; filing; effect

The department of state shall not file a certificate of dissolution unless the consent of the state tax commission to the dissolution is attached thereto. Upon filing the certificate, the corporation is dissolved.

*NY CLS N-PCL § 1005 (2006)*

§ 1005. [Repealed, eff April 9, 2006] Procedure after dissolution

(a) After dissolution:

(1) The corporation shall carry on no activities except for the purpose of winding up its affairs.

(2) The corporation shall proceed to wind up its affairs, with power to fulfill or discharge its contracts, collect its assets, sell its assets for cash at public or private sale, discharge or pay its liabilities, and do all other acts appropriate to liquidate its business.

(3) After paying or adequately providing for the payment of its liabilities, the remaining assets of the corporation shall be distributed in the following manner:

(A) Assets received and held by the corporation for a purpose specified as Type B in paragraph (b) of section 201 (Purposes) or which are legally required to be used for a particular purpose shall be distributed to one or more domestic or foreign corporations or other organizations engaged in activities substantially similar to those of the dissolved corporation pursuant to a plan of distribution adopted as provided in section 1001 (Plan of dissolution and distribution of assets) or as ordered by the court to which such plan is submitted for approval under section 1002 (Authorization of plan). Any disposition contained in any will or other instrument, in trust or otherwise, made before or after the dissolution, to or for the benefit of any corporation so dissolved shall inure to or for the benefit of the corporation or organization acquiring the assets of the dissolved corporation as provided herein, and so far as is necessary for that purpose the corporation or organization acquiring such disposition shall be deemed a successor to the dissolved corporation: provided, however, that such disposition shall be devoted by the acquiring corporation or organization to the purposes intended by the testator, donor or grantor.

(B) Other assets, if any, shall be distributed in accordance with the specifications of the plan of distribution adopted as provided in section 1001 (Plan of dissolution and distribution of assets) or, to the extent that the certificate of incorporation prescribes the distributive rights of members, or of any class or classes of members, as provided in such certificate.

(4) Any assets distributable to a creditor or member who is unknown or cannot be found, or who is under a disability, shall be paid to the state comptroller as abandoned property within six months

from the date fixed for the payment of the final liquidating distribution, and be subject to the provisions of the abandoned property law.

(b) Assets shall be distributed under a plan of distribution in accordance with the following order of priorities:

(1) Holders of capital certificates.

(2) Members.

Deleted: certificates of subvention.  
(2) Holders of

Deleted: 3

*NY CLS N-PCL § 1006 (2006)*

§ 1006. Corporate action and survival of remedies after dissolution

(a) [Until April 9, 2006] A dissolved corporation, its directors, officers and members may continue to function for the purpose of winding up the affairs of the corporation in the same manner as if the dissolution had not taken place, except as otherwise provided in this chapter or by court order. In particular and without limiting the generality of the foregoing:

(a) [Eff April 9, 2006] After dissolution, a corporation shall not commence any new activities. A dissolved corporation, its directors, officers and members may continue to function for the purpose of winding up the affairs of the corporation in the same manner as if the dissolution had not taken place, except as otherwise provided in this chapter or by court order. In particular and without limiting the generality of the foregoing:

(1) The directors of a dissolved corporation shall not be deemed to be trustees of its assets; title to such assets shall not vest in them, but shall remain in the corporation until transferred by it in its corporate name.

(2) Dissolution shall not change quorum or voting requirements for the board or members, or provisions regarding election, appointment, resignation or removal of, or filling vacancies among, directors or officers, or provisions regarding amendment or repeal of by-laws or adoption of new by-laws.

(3) Capital certificates may be transferred and determination of members for any purpose may be made without closing the record of members until such time, if any, as such record may be closed, and either the board or the members may close it.

(4) The corporation may sue or be sued in all courts and participate in actions and proceedings, whether judicial, administrative, arbitative or otherwise, in its corporate name, and process may be served by or upon it.

(b) The dissolution of a corporation shall not affect any remedy available to or against such corporation, its directors, officers or members, for any right or claim existing or any liability incurred before such dissolution, except as provided in sections 1007 (Notice to creditors; filing or barring claims) or 1008 (Jurisdiction of supreme court to supervise dissolution and liquidation.)

*NY CLS N-PCL § 1007 (2006)*

§ 1007. Notice to creditors by corporations intending to dissolve; filing or barring claims

(a) [Until April 9, 2006, § 1007 reads as set out below:] At any time after the plan of dissolution and distribution of assets shall have been (1) authorized as provided in section 1002 of this article (Authorization of plan), (2) approved by any governmental body or officer whose approval is required pursuant to paragraph (c) of section 1002 of this article, and (3) approved by a justice of the supreme court, if such approval is required pursuant to paragraph (d) of section 1002 of this article, or filed with the attorney general, if such filing is required pursuant to paragraph (d) of section 1002 of this article, and after dissolution, the corporation may give a notice requiring all creditors and claimants, including any with unliquidated or contingent claims and any with whom the corporation has unfulfilled contracts, to present their claims in writing and in detail at a specified place and by a specified day, which shall not be less than six months after the first publication of such notice. Such notice shall be published at least once a week for two successive weeks in a newspaper of general circulation in the county in which the office of the corporation was located at the date of authorization of its plan of dissolution and distribution of assets as provided in section 1002 of this article (Authorization of plan). On or before the date of the first publication of such notice, the corporation shall mail a copy thereof, postage prepaid and addressed to his last known address, to each person believed to be a creditor of or claimant against the corporation whose name and address are known to or can with due diligence be ascertained by the corporation. The giving of such notice shall not constitute a recognition that any person is a proper creditor or claimant, and shall not revive or make valid, or operate as a recognition of the validity of, or a waiver of any defense or counterclaim in respect of any claim against the corporation, its assets, directors, officers or members, which has been barred by any statute of limitations or become invalid by any cause, or in respect of which the corporation, its directors, officers or members, has any defense or counterclaim.

(b) Any claims which shall have been filed as provided in such notice and which shall be disputed by the corporation may be submitted for determination to the supreme court under section 1008 (Jurisdiction of supreme court to supervise dissolution and liquidation). A claim filed by the trustee or paying agent for the holders of bonds or coupons shall have the same effect as if filed by the holder of any such bonds or coupons. Any person whose claim is, at the date of the first publication of such notice, barred by any statute of limitations is not a creditor or claimant entitled to any notice under this section or section 1008. The claim of any such person and all other claims which are not timely filed as provided in such notice except claims which are the subject of litigation on the date of the first publication of such notice and all claims which are so filed but are disallowed by the court under section 1008, shall be forever barred as against the corporation, its assets, directors, officers and members, except to such extent, if any, as the court may allow them against any remaining assets of the corporation in the case of a creditor who shows satisfactory reason for his failure to file his claim as so provided. If the court requires a further notice under section 1008, any reference to a notice in this section shall, to the extent that the court so orders, mean such further notice, except that a claim which has been filed in accordance with a notice under this section need not be refiled under such further notice.

(c) Notwithstanding this section and section 1008, tax claims and other claims of this state and of the United States shall not be required to be filed under those sections, and such claims shall not be barred because not so filed, and distribution of the assets of the corporation, or any part thereof, may be deferred until determination of any such claims.

(d) Laborer's wages shall be preferred claims and entitled to payment before any other creditors out of the assets of the corporation in excess of valid prior liens or encumbrances.

(a) [Eff April 9, 2006, § 1007 reads as set out below:] At any time prior to filing the certificate of dissolution, the corporation may give a notice requiring all creditors and claimants, including any with unliquidated or contingent claims and any with whom the corporation has unfulfilled contracts, to present their claims in writing and in detail at a specified place and by a specified day, which shall not be less than six months after the first publication of such notice. Such notice shall be published at least once a week for two successive weeks in a newspaper of general circulation in the county in which the office of the corporation was located at the date of dissolution. On or before the date of the first publication of such notice, the corporation shall mail a copy thereof, postage prepaid, to each person believed to be a creditor of or claimant against the corporation whose current name and address are known to or can with due diligence be ascertained by the corporation. The giving of such notice shall not constitute a recognition that any person is a proper creditor or claimant, and shall not revive or make valid, or operate as a recognition of the validity of, or a waiver of any defense or counterclaim in respect of any claim against the corporation, its assets, directors, officers or members, which has been barred by any statute of limitations or become invalid by any cause, or in respect of which the corporation, its directors, officers or members, has any defense or counterclaim.

(b) Any claims which shall have been filed as provided in such notice and which shall be disputed by the corporation may be submitted for determination to the supreme court under section 1008 (Jurisdiction of supreme court to supervise dissolution and liquidation) or pursuant to article 11 (Judicial dissolution). A claim filed by the trustee or paying agent for the holders of bonds or coupons shall have the same effect as if filed by the holder of any such bonds or coupons. Any person whose claim is, at the date of the first publication of such notice, barred by any statute of limitations is not a creditor or claimant entitled to any notice under this section or such section 1008. The claim of any such person and all other claims which are not timely filed as provided in such notice except claims which are the subject of litigation on the date of the first publication of such notice and all claims which are so filed but are disallowed by the court under such section 1008, shall be forever barred as against the corporation, its assets, directors, officers and members, except to such extent, if any, as the court may allow them against any remaining assets of the corporation in the case of a creditor who shows satisfactory reason for failure to file a claim as so provided. If the court requires a further notice under such section 1008, any reference to a notice in this section shall, to the extent that the court so orders, mean such further notice, except that a claim which has been filed in accordance with a notice under this section need not be refiled under such further notice.

(c) Notwithstanding this section and section 1008 (Jurisdiction of supreme court to supervise dissolution and liquidation), tax claims and other claims of this state and of the United States shall not be required to be filed under those sections, and such claims shall not be barred because not so filed, and distribution of the assets of the corporation, or any part thereof, may be deferred until determination of any such claims.

(d) Laborer's wages shall be preferred claims and entitled to payment before any other creditors out of the assets of the corporation in excess of valid prior liens or encumbrances.

§ 1008. Jurisdiction of supreme court to supervise dissolution and liquidation

(a) [Until April 9, 2006] At any time after the filing of a certificate of dissolution under this article, the supreme court in the judicial district where the office of the corporation was located at the date of its dissolution, in a special proceeding instituted under this section, upon the petition of the corporation or, in a situation approved by the court, upon the petition of a creditor, claimant, director, officer, member, subscriber for capital certificates, incorporator or the attorney-general, may suspend or annul the dissolution or continue the liquidation of the corporation under the supervision of the court and may make all such orders as it may deem proper in all matters in connection with the dissolution or the winding up of the affairs of the corporation, and in particular, and without limiting the generality of the foregoing, in respect of the following:

(a) [Eff April 9, 2006] At any time after the filing of a certificate of dissolution under this article, the supreme court in the judicial district where the office of the corporation was located at the date of its dissolution, in a special proceeding instituted under this section, upon the petition of the corporation or, in a situation approved by the court, upon the petition of a creditor, claimant, director, officer, member, subscriber for capital certificates, incorporator or the attorney general, may suspend or annul the dissolution or continue the liquidation of the corporation under the supervision of the court and may make all such orders as it may deem proper in all matters in connection with the dissolution or the winding up of the affairs of the corporation, and in particular, and without limiting the generality of the foregoing, in respect of the following:

(1) The determination of the validity of the authorization of the dissolution of the corporation and of the execution and delivery of the certificate of dissolution under this article.

(2) The adequacy of the notice given to creditors and claimants and, if it is determined to have been inadequate, the requirement of such further notice as the court may deem proper.

(3) The determination of the validity and amount of invalidity of any claims which have been presented to the corporation.

(4) The barring of all creditors and claimants who have not timely filed claims as provided in any such notice, or whose claims have been disallowed by the court, as against the corporation, its assets, directors, officers and members.

(5) The determination and enforcement of the liability of any director, officer, member or subscriber for capital certificates, to the corporation or for the liabilities of the corporation.

(6) The presentation and filing of intermediate and final accounts of the directors, the hearing thereon, the allowance or disallowance thereof, and the discharge of the directors, or any of them, from their liabilities.

(7) The administration of any trust, or the disposition of any property held in trust by or for the corporation.



(8) The payment, satisfaction or compromise of claims against the corporation, the retention of assets for such purpose, and the determination of the adequacy of provisions made for payment of the liabilities of the corporation.

**Deleted:** The adequacy of a plan of distribution.¶  
(9)

(9) The disposition or destruction of records, documents and papers of the corporation.

**Deleted:** 10

(10) The appointment and removal of a receiver under article 12 (Receivership) who may be a director, officer or member of the corporation.

**Deleted:** 11

(11) The issuance of injunctions for one or more of the purposes and as provided in section 1113 (Injunction).

**Deleted:** 12

(12) The return of subscription payments to subscribers for capital certificates, and the making of distributions, in cash or in kind or partly in each, to the members.

**Deleted:** 13

(13) [Until April 9, 2006] The payment to the state comptroller, as abandoned property, of assets under subparagraph (a)(4) of section 1005 (Procedure after dissolution).

**Deleted:** 14

(13) [Eff April 9, 2006] The payment to the state comptroller, as abandoned property, of assets under paragraph (d) of section 1002-a (Carrying out the plan of dissolution and distribution of assets).

**Deleted:** 14

(14) [Until April 9, 2006] Where held by the corporation were assets received for specific purposes, the distribution of such assets to one or more domestic or foreign corporations or other organizations engaged in activities substantially similar to those of the dissolved corporation, on notice to the attorney-general and to such other persons, and in such manner, as the court may deem proper.

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**Deleted:** either for a purpose specified as Type B in paragraph (b) of section 201 (Purposes), or

**Deleted:** legally required to be used for a particular purpose

(14) [Eff April 9, 2006] Where assets held by the corporation were assets received for specific purposes, the distribution of such assets to one or more domestic or foreign corporations or other organizations engaged in activities substantially similar to those of the dissolved corporation, on notice to the attorney general and to such other persons, and in such manner, as the court may deem proper.

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**Deleted:** were received and

**Deleted:** for a purpose specified as Type B in paragraph (b) of section 201 (Purposes), or

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(b) No order annulling a dissolution shall be made under this section if the name of the corporation whose dissolution is to be annulled is no longer available for use by such corporation, unless such corporation submits with its petition for the annulment of the dissolution a certificate of reservation of another available name.

(c) Orders under this section may be entered ex parte, except that if such special proceeding was not instituted upon petition of the corporation, notice shall be given to the corporation in such manner as the court may direct. Notice shall be given to other persons interested, and in such manner, as the court may deem proper, of any hearings and of the entry of any orders on such matters as the court shall deem proper. All orders made by the court under this section shall be binding upon the attorney-general, the corporation, its directors, officers, members, subscribers for capital certificates, incorporators, creditors and claimants.

*NY CLS N-PCL § 1009 (2006)*

§ 1009. Applicability to dissolution under other provisions

[Until April 9, 2006, § 1009 reads as set out below:] The provisions of section 1005 (Procedure after dissolution), 1006 (Corporate action and survival of remedies after dissolution), 1007 (Notice to creditors; filing or barring claims) and 1008 (Jurisdiction of supreme court to supervise dissolution and liquidation) shall apply to a corporation dissolved by expiration of its period of duration or under *section 203-a of the tax law*, or to an incorporated firemen's benevolent association created by act of the legislature if such act is subsequently repealed.

[Eff April 9, 2006, § 1009 reads as set out below:] The provisions of paragraphs (c), (d) and (e) of section 1002-a of this article (Carrying out the plan of dissolution and distribution of assets, sections 1006 (Corporate action and survival of remedies after dissolution), 1007 (Notice to creditors; filing or barring claims) and 1008 (Jurisdiction of supreme court to supervise dissolution and liquidation) shall apply to a corporation dissolved by proclamation pursuant to section 1014 (Dissolution of domestic corporations by proclamation), by expiration of its period of duration or under *section 203-a of the tax law*, or to an incorporated firemen's benevolent association created by act of the legislature if such act is subsequently repealed.

*NY CLS N-PCL § 1010 (2006)*

§ 1010. Revocation of voluntary dissolution proceedings

(a) At any time prior to the filing of a certificate of dissolution by the department of state, a corporation may revoke the action taken to dissolve the corporation in the following manner:

(1) If there are members entitled to vote thereon:

(A) Unless the certificate of incorporation dispenses with dissolution action by the board, the board shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked and directing submission of the proposed revocation to a vote of the members entitled to vote thereon.

(B) Revocation of the voluntary dissolution proceedings shall be authorized by two-thirds vote as provided in paragraph (c) of section 613 (Vote of members).

(2) If there are no members entitled to vote thereon, revocation of the voluntary dissolution proceedings shall be authorized by the vote of a majority of the directors then in office.

(3) If approval of the dissolution of a corporation by a governmental body or officer is required, as provided in paragraph (c) of section 1002 (Authorization of plan), and such approval has been given, revocation of the voluntary dissolution proceedings shall not be authorized without approval thereof by such body or officer.

*NY CLS N-PCL § 1011 (2006)*

§ 1011. [Repealed]

*NY CLS N-PCL § 1012 (2006)*

§ 1012. Certificate of annulment of dissolution and reinstatement of corporate existence

(a) Any corporation dissolved under former section 57 of the membership corporations law may, at any time after the effective date of this chapter, deliver to the department of state a signed certificate which shall be entitled, "certificate of annulment of dissolution and reinstatement of corporate existence of . . . . . (name of corporation) pursuant to *section 1012 of the Not-for-Profit Corporation Law*", and shall set forth:

(1) The name of the corporation and, if it has been changed, the name under which it was formed.

(2) The date of the filing of its certificate of incorporation by the department of state.

(3) The law under which it was formed.

(4) That it failed to deliver to the department of state a certificate, as required by subdivision 1 of section 57 of the membership corporations law.

(5) That it elects to be reinstated and to continue its corporate existence.

(6) [Until April 9, 2006] That, under section 201 (Purposes), it is a non-profit corporation.

(6) [Eff April 9, 2006] That, under section 201 (Purposes), it is a non-profit corporation.

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(b) [Until April 9, 2006] Notwithstanding subparagraph (a)(1) of section 1006 (Corporate action and survival of remedies after dissolution), the directors of a corporation whose dissolution is annulled under this section shall be deemed trustees of its assets, unless such assets have been distributed pursuant to section 1005 (Procedure after dissolution).

(b) [Eff April 9, 2006] Notwithstanding subparagraph one of paragraph (a) of section 1006 (Corporate action and survival of remedies after dissolution), the directors of a corporation whose dissolution is annulled under this section shall be deemed trustees of its assets, unless such assets have been distributed pursuant to section 1002-a (Carrying out the plan of dissolution and distribution of assets).

(c) The filing of such certificate by the department of state shall have the effect of annulling all of the proceedings theretofore taken for the dissolution of such corporation, and it shall thereafter have such corporate powers, rights, privileges, immunities, duties and liabilities as it had on the date of publication of the proclamation of dissolution, as if such proclamation had not been made and published.

(d) The department of state shall not file a certificate of annulment of dissolution and reinstatement of corporate existence if the name of the corporation being reinstated is not available under section 301 (Corporate name; general) for use by a corporation then being formed under this chapter, unless such certificate shall change the name to one which is available for such use.

(e) If, after the publication of the proclamation of dissolution, it shall appear that the name of any corporation was erroneously included therein, the secretary of state shall make an appropriate entry on the records of the department of state, which entry shall have the effect of annulling all of the proceedings theretofore taken for the dissolution of the corporation under this section, and it shall have such corporate powers, rights, privileges, immunities, duties and liabilities as it had on the date of such publication of the proclamation, as if such proclamation had not been made and published.

(f) Whenever a corporation has complied with paragraph (a) or the action specified in paragraph (e) has been taken, the secretary of state shall publish a notice thereof in the state advertising bulletin and shall send a copy of such bulletin to the clerk of the county in which the office of the corporation is located. The county clerk shall file such copy and make appropriate entry on his record without charge.

(g) Nothing in this section shall be deemed to extend the duration of any corporation as stated in its certificate of incorporation.

(h) The fee of the secretary of state for filing a certificate under this section shall be ten dollars.

*NY CLS N-PCL § 1013 (2006)*

§ 1013. Dissolution of certain firemen's benevolent associations

(a) An incorporated firemen's benevolent association created by act of the legislature may dissolve in accordance with the provisions of this article.

(b) Any such corporation authorized to have paid to it foreign fire insurance premium taxes imposed under *sections 9104 and 9105 of the insurance law* shall, in addition to any other requirements of this article, file with the superintendent of insurance a copy of the certificate of dissolution. Moneys then due and owing to the corporation under said sections, and moneys thereafter otherwise payable to the corporation pursuant to such authorization, shall be distributed as provided in said sections.

*NY CLS N-PCL § 1014 (2006)*

§ 1014. Dissolution of domestic corporations by proclamation.

Every corporation incorporated pursuant to this chapter, other than a corporation incorporated pursuant to article 15 (Public cemetery corporations), and registered or required to be registered pursuant to article 7-A of the executive law or article 8 of the estates, powers and trusts law shall be subject to dissolution for failure to register or to file annual financial reports in accordance with the following procedures:

(a) On or before the last day of March, June, September and December in each calendar year, the attorney general may certify and transmit to the department of state a list containing the names of any or all corporations formed pursuant to this chapter and registered or required to register pursuant to article 7-A of the executive law or article 8 of the estates, powers and trusts law that have not filed annual financial reports for each of the five years immediately preceding the date of such certification. This section shall not be applicable to corporations that filed reports deemed by the attorney general to be incomplete, erroneous or otherwise deficient.

(b) No corporation shall be included in any list prepared pursuant to paragraph (a) of this section unless (1) in each of the last two years during which such corporation failed to file its

annual report, the attorney general has sent to such corporation by certified mail return receipt requested notice that the corporation has failed to file and has three months from the date of such notice to file all delinquent reports and complete all registration requirements, provided, however, that if the last known address of record of the corporation is not within the United States, the notice to such corporation shall be sent by any other reasonable means, (2) the second such notice was sent at least six months prior to the date of the certification required by paragraph (a) of this section and (3) the attorney general used reasonable diligence to identify a current address for the corporation.

(c) If the secretary of state, upon comparing the names so certified with his or her records, shall discover error, he or she may return the list to the attorney general for correction.

(d) The secretary of state shall make a proclamation under his or her hand and seal of office as to each list received from the attorney general declaring any corporations whose names are included in such list to be dissolved and their certificates of incorporation to be forfeited. The secretary shall file the original proclamation in his or her office and shall publish a copy thereof in the state register no later than three months following receipt of the list by him or her.

(e) Upon the publication of such proclamation in the manner proscribed in paragraph (d) of this section, each corporation named therein shall be deemed dissolved without further legal proceedings.

(f) The secretary of state shall mail a copy of the state register containing such proclamation to the clerk of each county in the state. The county clerk shall file the copy without charge but need not record it.

(g) The names of all corporations so dissolved shall be reserved for a period of one year immediately following the publication of the proclamation, and during such period no domestic business corporation, non-profit corporation, limited liability company or limited partnership shall be formed under a name the same as any name so reserved or which may not be distinguished from any name so reserved, nor shall any foreign business corporation, non-profit corporation, limited liability company or limited partnership, within such period, be authorized to do business or conduct activities in this state under a name the same as any name which may not be distinguished from such any name so reserved.

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(h) Any corporation so dissolved may file in the department of state a written consent by the attorney general to the reinstatement of the corporation. Such written consent shall be given if the attorney general shall have received all annual financial reports and fees required by article 7-A of the executive law and article 8 of the estates, powers and trusts law and penalties and interest charges related thereto have been paid or waived. The filing of such consent shall have the effect of annulling all of the proceedings theretofore taken under the provisions of this section for the dissolution of such corporation with the same force and effect as if such proclamation had not been made or published. The fee of the secretary of state for filing such consent shall be fifty dollars. No such consent shall be filed if the name of a domestic not-for-profit corporation, business corporation, non-profit corporation, limited liability company or limited partnership formed later than one year after the publication of the proclamation of dissolution, or the name or fictitious name

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or of a foreign business corporation, non-profit corporation, limited liability company or limited partnership which has obtained authority to do business or conduct activities in the state later than one year after such proclamation, or name which has been reserved later than one year after such proclamation, is the same as or may not be distinguished from the name of the corporation filing such consent unless such corporation simultaneously files in the department of state a certificate of amendment to change the name of such corporation. Such certificate of amendment shall be executed in like manner as if such corporation had not been dissolved.

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(i) If, after the publication of such proclamation, it shall appear that the name of any corporation was erroneously included therein, the attorney general shall so certify to the secretary of state, and the secretary of state shall make appropriate entry on the records of the department of state, which entry shall have the effect of annulling all of the proceedings theretofore taken under the provisions of this section for the dissolution of such corporation with the same force and effect as if such proclamation had not been made or published.

(j) Whenever a corporation shall have complied with paragraph (h) of this section or whenever the procedures specified in paragraph (i) of this section shall have been taken, the secretary of state shall publish a notice thereof in the state register and shall send a copy of such notice to the county clerk of the county in which, according to his or her records, the office of the corporation is located. Such county clerk shall file such copy and make appropriate entry on his or her records without charge.

(k) If, after the dissolution of any corporation, assets of the corporation are located, the attorney general shall act with respect to such assets in accordance with this article and article 11 (Judicial dissolution).

*NY CLS N-PCL § 1101 (2006)*

§ 1101. Attorney-general's action for judicial dissolution

(a) The attorney-general may bring an action for the dissolution of a corporation upon one or more of the following grounds:

(1) That the corporation procured its formation through fraudulent misrepresentation or concealment of a material fact.

(2) That the corporation has exceeded the authority conferred upon it by law, or has violated any provision of law whereby it has forfeited its charter, or carried on, conducted or transacted its business in a persistently fraudulent or illegal manner, or by the abuse of its powers contrary to public policy of the state has become liable to be dissolved.

(b) An action under this section is triable by jury as a matter or [of] [n1] right.

(c) The enumeration in paragraph (a) of grounds for dissolution shall not exclude actions or special proceedings by the attorney-general or other state officials for the annulment or dissolution of a corporation for other causes as provided in this chapter or in any other statute of this state.

*NY CLS N-PCL § 1102 (2006)*

§ 1102. Judicial dissolution; petition by directors or members; petition in case of deadlock among directors or members

(a) A petition for the judicial dissolution of a corporation may be presented:

(1) By a majority of the directors then in office, or by the members, or such of them as are designated for such purpose, when authorized to do so by a resolution adopted by majority vote as provided in paragraph (c) of section 613 (Vote of members) (provided that, notwithstanding any provision of the certificate of incorporation or the by-laws, a members' meeting to consider such a resolution may be called, no more often than once in any period of twelve consecutive months, by ten percent of the members entitled to vote thereon or by such lesser percentage or number of members as may be provided in the certificate of incorporation or by-laws), in the following cases:

(A) The assets of the corporation are not sufficient to discharge its liabilities.

(B) Dissolution will be beneficial to the members.

(2) By ten percent of the total number of members or by any director, in the following cases:

(A) The directors are so divided respecting the management of the corporation's affairs that the votes required for action by the board cannot be obtained.

(B) The members are so divided that the votes required for the election of directors cannot be obtained.

(C) There is internal dissension and two or more factions of members are so divided that dissolution would be beneficial to the members.

(D) The directors or members in control of the corporation have looted or wasted the corporate assets, have perpetuated the corporation solely for their personal benefit, or have otherwise acted in an illegal, oppressive or fraudulent manner.

(E) The corporation is no longer able to carry out its purposes.

(b) In any proceeding for judicial dissolution the attorney-general shall be a necessary party.

*NY CLS N-PCL § 1103 (2006)*

§ 1103. Contents of petition for judicial dissolution

A petition for dissolution shall specify the section, and the subparagraph or subparagraphs thereof, under which it is authorized and state the reasons why the corporation should be dissolved. It shall be verified by the petitioner or by one of the petitioners.

*NY CLS N-PCL § 1104 (2006)*

§ 1104. Order to show cause; issuance; publication, service, filing



(a) Upon the presentation of such a petition, the court shall make an order requiring the corporation and all persons interested in the corporation to show cause before it, or before a referee designated in the order, at a time and place therein specified, not less than four weeks after the granting of the order, why the corporation should not be dissolved. In connection therewith, the court may order the corporation, its officers and directors, to furnish the court with a schedule of all information, known or ascertainable with due diligence by them, deemed pertinent by the court, including a statement of the corporate assets and liabilities, and the name and address of each member and of each creditor and claimant, including any with unliquidated or contingent claims and any with whom the corporation has unfulfilled contracts.

(b) A copy of the order to show cause shall be published as prescribed therein, at least once in each of the three weeks before the time appointed for the hearing thereon, in one or more newspapers, specified in the order, of general circulation in the county in which the office of the corporation is located at the date of the order.

(c) A copy of the order to show cause shall be served upon the state tax commission and the corporation and upon each person named in the petition, or in any schedule provided for in paragraph (a), as a member, creditor or claimant, except upon a person whose address is stated to be unknown and cannot with due diligence be ascertained by the corporation. The service shall be made personally, at least ten days before the time appointed for the hearing, or by mailing a copy of the order, postage prepaid, at least twenty days before the time so appointed, addressed to the person to be served at his last known address.

(d) A copy of the order to show cause and the petition shall be filed, within ten days after the order is entered, with the clerk of the county where the office of the corporation is located at the date of the order. A copy of each schedule furnished to the court under this section shall, within ten days thereafter, be filed with such clerk.

(e) Publication, service and filing provided for in this section shall be effected by the corporation or such other persons as the court may order.

*NY CLS N-PCL § 1105 (2006)*

§ 1105. Amending papers

At any stage, before final order, the court may grant an order amending the petition or any other paper filed in the action or special proceeding, with like effect as though originally filed as amended, or otherwise as the court may direct.

*NY CLS N-PCL § 1106 (2006)*

§ 1106. Referee

If a referee was not designated in the order to show cause, the court, in its discretion, may appoint a referee when or after the order is returnable. The court may at any time appoint a successor referee.

*NY CLS N-PCL § 1107 (2006)*

§ 1107. Hearing and decision

At the time and place specified in the order to show cause, or at any other time and place to which the hearing is adjourned, the court or the referee shall hear the allegations and proofs of the parties and determine the facts. The decision of the court or the report of the referee shall be made and filed with the clerk of the court with all convenient speed.

*NY CLS N-PCL § 1108 (2006)*

§ 1108. Application for final order

When the hearing is before a referee, a motion for a final order must be made to the court upon notice to each party to the action or special proceeding who has appeared therein. The notice of motion may be served as prescribed for the service of papers upon an attorney in an action in such court. When the hearing is before the court, a motion for a final order may be made at the hearing or at such time and upon such notice as the court prescribes.

*NY CLS N-PCL § 1109 (2006)*

§ 1109. Judgment or final order of dissolution

(a) In an action or special proceeding under this article if, in the court's discretion, it shall appear that the corporation should be dissolved, it shall make a judgment or final order dissolving the corporation.

(b) In making its decision, the court shall take into consideration the following criteria:

(1) In an action brought by the attorney-general, the interest of the public is of paramount importance.

(2) In a special proceeding brought by directors or members, the benefit to the members of a dissolution is of paramount importance.

(c) [Until April 9, 2006] If the judgment or final order shall provide for a dissolution of the corporation, the court may, in its discretion, provide therein for the distribution of the property of the corporation to those entitled thereto according to their respective rights.

(c) [Eff April 9, 2006] If the judgment or final order shall provide for a dissolution of the corporation, the court may, in its discretion, provide therein for the distribution of the property of the corporation to those entitled thereto according to their respective rights. Any property of the corporation

described in subparagraph one of paragraph (c) of section 1002-a (Carrying out the plan of dissolution and distribution of assets) shall be distributed in accordance with that section.

(d) The clerk of the court or such other person as the court may direct shall transmit certified copies of the judgment or final order of dissolution to the department of state and to the clerk of the county in which the office of the corporation was located at the date of the judgment or order. Upon filing by the department of state, the corporation shall be dissolved.

(e) The corporation shall promptly thereafter transmit a certified copy of the judgment or final order to the clerk of each other county in which its certificate of incorporation was filed.

*NY CLS N-PCL § 1110 (2006)*

§ 1110. Venue

An action or special proceeding under this article shall be brought in the supreme court in the judicial district in which the office of the corporation is located at the time of the service on the corporation of a summons in such action or of the presentation to the court of the petition in such special proceeding.

*NY CLS N-PCL § 1111 (2006)*

§ 1111. Preservation of assets; appointment of receiver

At any stage of an action or special proceeding under this article, the court may, in its discretion, make all such orders as it may deem proper in connection with preserving the property and carrying on the business of the corporation, including the appointment and removal of a receiver under article 12 (Receivership), who may be a director, officer or member of the corporation.

*NY CLS N-PCL § 1112 (2006)*

§ 1112. Certain sales, transfers, security interests and judgments void

A sale, mortgage, conveyance or other transfer of, or the creation of a security interest in any property of a corporation made, without prior approval of the court, after service upon the corporation of a summons in an action, or of an order to show cause in a special proceeding, under this article in payment of or as security for an existing or prior debt or for any other or for no consideration, or a judgment thereafter rendered against the corporation by confession or upon the acceptance of any offer, shall be void as against such persons and, to such extent, if any, as the court shall determine.

*NY CLS N-PCL § 1113 (2006)*

§ 1113. Injunction

(a) At any stage of an action or special proceeding under this article, the court may, in its discretion, grant an injunction, effective during the pendency of the action or special proceeding or such shorter period as it may specify in the injunction, for one or more of the following purposes:

(1) Restraining the corporation and its directors and officers from conducting any unauthorized activities and from exercising any corporate powers, except by permission of the court.

(2) Restraining the corporation and its directors and officers from collecting or receiving any debt or other property of the corporation, and from paying out or otherwise transferring or delivering any property of the corporation, except by permission of the court.

(3) Restraining the creditors of the corporation from beginning any action against the corporation, or from taking any proceedings in an action theretofore commenced, except by permission of the court. Such injunction shall have the same effect and be subject to the same provisions of law as if each creditor upon whom it is served was named therein.

*NY CLS N-PCL § 1114 (2006)*

§ 1114. Discontinuance of action or special proceeding

An action or special proceeding for the dissolution of a corporation may be discontinued at any stage when it is established that the cause for dissolution did not exist or no longer exists. In such event, the court shall dismiss the action or special proceeding and direct any receiver to redeliver to the corporation all its remaining property.

*NY CLS N-PCL § 1115 (2006)*

§ 1115. Applicability of other provisions

(a) [Until April 9, 2006] Subject to the provisions of this article, the provisions of section 1005 (Procedure after dissolution), 1006 (Corporate action and survival of remedies after dissolution), 1007 (Notice to creditors; filing or barring claims) and 1008 (Jurisdiction of supreme court to supervise dissolution and liquidation) shall apply to a corporation dissolved under this article.

(a) [Eff April 9, 2006] Subject to the provisions of this article, the provisions of sections 1006 (Corporate action and survival of remedies after dissolution), 1007 (Notice to creditors; filing or barring claims) and 1008 (Jurisdiction of supreme court to supervise dissolution and liquidation) shall apply to a corporation dissolved under this article.

(b) Any orders provided for in section 1008, may be made at any stage of an action or special proceeding for dissolution of a corporation under this article, and if the corporation is dissolved under this article, the court may retain jurisdiction for the purpose of making such orders, after the dissolution, in such action or special proceeding. The court may also make such orders in separate special proceedings, as provided in section 1008.

(c) Notice to creditors and claimants, provided for in section 1007, may also be given, by order of the court, at any stage of an action or special proceeding for dissolution of a corporation under this article.

*NY CLS N-PCL § 1201 (2006)*

§ 1201. Action by judgment creditor for sequestration

Where final judgment for a sum of money has been rendered against a corporation, and an execution issued thereupon to the sheriff of the county where the corporation conducts its activities, or where its office is located, has been returned wholly or partly unsatisfied, the judgment creditor may maintain an action to procure a judgment sequestering the property of the corporation and providing for a distribution thereof.

*NY CLS N-PCL § 1202 (2006)*

§ 1202. Appointment of receiver of property of a domestic or foreign corporation

(a) A receiver of the property of a corporation can be appointed only by the court, and in one of the following cases:

(1) An action or special proceeding brought under article 10 (Non-judicial dissolution) or 11 (Judicial dissolution).

(2) An action under section 1201 (Action by judgment creditor for sequestration).

(3) An action brought by the attorney-general under section 112 (Actions or special proceedings by attorney-general), or brought by the attorney-general or by a member to preserve the assets of a corporation, which has no officer within this state qualified to administer them.

(4) An action to preserve the assets in this state, of any kind, tangible or intangible, of a foreign corporation which has been dissolved, nationalized or its authority or existence otherwise terminated or cancelled in the jurisdiction of its incorporation or which has ceased to conduct its activities, brought by any creditor or member of such corporation or by one on whose behalf an order of attachment against the property of such corporation has been issued.

(5) An action brought for the foreclosure of a mortgage upon property of the corporation, where the mortgage debt or the interest thereon has remained unpaid for at least thirty days after payment demanded and where either the income of the property is specifically mortgaged or the property itself appears to be insufficient to pay the mortgage debt. A receiver appointed under this subparagraph shall be receiver only of the property upon which the mortgage is being foreclosed.

(6) An application of the regents of the university, in aid of the liquidation of a corporation whose dissolution they contemplate or have decreed; or on the application of the trustees of such a corporation, on notice to the regents.

(b) A receiver shall be subject to the control of the court at all times and may be removed by the court at any time.

(c) All actions or special proceedings brought by or against a receiver shall have a preference upon the calendars of all courts next in order to actions or special proceedings brought by the people of the state of New York.

*NY CLS N-PCL § 1203 (2006)*

§ 1203. Temporary and permanent receiver

(a) At any stage before final judgment or final order in an action or special proceeding brought under this article, the court may appoint one or more receivers of the property of the corporation or of the property in this state of a foreign corporation against which an action has been brought under subparagraph (a) (4) of section 1202 (Appointment of a receiver of property of a domestic or foreign corporation). Notice of an application shall be given to the attorney-general, to each governmental body or officer whose consent is required for the dissolution of such corporation, and to such other persons and in such manner as the court directs. The determination by the court of the necessity or advisability of appointing a receiver or an attorney for a receiver, and the allowance of expenses, commissions or compensation to the receiver or such attorney, shall be subject to review on appeal. This provision shall not affect any other right to review on appeal.

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(b) A receiver appointed by or under a final judgment or order in an action or special proceeding, or a temporary receiver who is continued by the final judgment or order, is a permanent receiver. The court may confer upon a temporary receiver the powers, and subject the temporary receiver to the duties of a permanent receiver, or so much thereof as it deems proper.

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*NY CLS N-PCL § 1204 (2006)*

§ 1204. Oath and security

(a) A receiver, before entering upon his duties, shall:

(1) Take and subscribe an oath that he or she will faithfully, honestly and impartially discharge the trust committed to him or her, and the oath shall be filed with the clerk of the court in which the action or special proceeding is pending.

(2) File with the clerk of such court a bond to the people, with at least two sufficient sureties or a bond executed by any fidelity or surety company authorized by the laws of this state to transact business, in a penalty fixed by the court appointing him or her, conditioned for the faithful discharge of the duties as receiver. The court may at any time direct a receiver to give a new bond with new sureties and with like condition.

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*NY CLS N-PCL § 1205 (2006)*

§ 1205. Designation of depositories by court

All orders appointing a receiver of a corporation shall designate therein one or more places of deposit, wherein all funds of the corporation not needed for immediate disbursement shall be deposited and no other deposits and no investment of such funds shall be made, except upon the order of the court.

*NY CLS N-PCL § 1206 (2006)*

§ 1206. Powers of permanent receiver

(a) A permanent receiver, upon qualifying under section 1204 (Oath and security), shall be vested with title to all the property of the corporation wherever situated or of the property in this state of a foreign corporation against which an action or special proceeding has been brought under subparagraph (a)(4) of section 1202 (Appointment of receiver of property of a domestic or foreign corporation), for the benefit of the creditors and members of the corporation.

(b) A permanent receiver shall have the power:

(1) To sue in his own name or otherwise for the recovery of the property, debts and causes of action of the corporation. No set-off or counterclaim shall be allowed in any such action for any demand unless it was owing by the corporation to the defendant before the commencement of the action or special proceeding in which the receiver was appointed or unless it shall have been incurred by the receiver subsequent to his appointment.

(2) To sell at public or private sale all the property vested in the permanent receiver, in such manner and on such terms and conditions as the court shall direct, and to make necessary transfers and conveyances thereof.

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(3) To examine on oath, to be administered by the permanent receiver, any person concerning any matter pertaining to or affecting the receivership.

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(4) To settle or compound any demands by or against the receivership.

(c) When more than one receiver is appointed, all provisions in this article in reference to one receiver shall apply to them.

(d) When more than one receiver is appointed, the debts and property of the corporation may be collected and received by any of them; when more than two receivers are appointed, the powers and rights conferred on them may be exercised by any two.

(e) When more than one receiver is appointed, the survivor or survivors of such receivers shall have all the powers and rights of the receivers.

*NY CLS N-PCL § 1207 (2006)*

§ 1207. Duties of receiver upon appointment

(a) Upon appointment and qualification, a receiver shall have the following duties:

(1) To give immediate notice of his appointment by publication once a week for two successive weeks in two newspapers of general circulation in the county where the office of the corporation is located or, in the case of a foreign corporation against which an action has been brought under subparagraph (a)(4) of section 1202 (Appointment of receiver of property of a domestic or foreign corporation), in a newspaper of general circulation as directed by the court, requiring:

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(A) All persons indebted to the corporation to render an account of all debts owing by them to the corporation and to pay the same to the receiver at a specified place and by a specified day.



(B) All persons having in their possession any property of the corporation to deliver the same to the receiver at the specified place and by the specified day.

(C) All creditors and claimants, including any with unliquidated or contingent claims and any with whom the corporation has unfulfilled contracts, to present their claims to the receiver in writing and in detail at a specified place and by a specified day, which shall not be less than six months after the first publication of such notice. Whenever a receiver is appointed in dissolution proceedings under article 10 (Non-judicial dissolution) or article 11 (Judicial dissolution), section 1007 (Notice to creditors; filing or barring claims) shall apply and shall control the giving of notice to creditors and claimants and the filing and barring of claims.

(2) To call a general meeting of the creditors of the corporation within four months from the date of his appointment by a notice to be published as directed in subparagraph (a)(1), setting forth the time and place of such meeting, which time shall be not more than two months, nor less than one month after the first publication of such notice. At such meeting, or at an adjournment thereof, the receiver shall present a statement of all accounts and demands for and against the corporation, its subsisting contracts, and the money and other assets in his or her hands.

(3) To keep true books of account of all moneys received and expended by him or her as receiver, which books shall be open for inspection at reasonable times by creditors or other persons interested therein. On or before the first day of February in each year, for the preceding calendar year, and at such other times as the court shall direct, the receiver shall file with the clerk of the court by which he or she was appointed a verified statement showing the assets received, the disposition thereof, the money on hand, all payments made, specifying the persons to whom paid and the purpose of the payments, the amount necessary to be retained to meet necessary expenses and claims against the receiver, and the distributive share in the remainder of each person interested therein. A copy of such statement shall be served by the receiver upon the attorney-general within five days after the filing thereof.

*NY CLS N-PCL § 1208 (2006)*

§ 1208. Penalty for concealing property from receiver

Any persons having possession of property belonging to the corporation, who shall wrongfully withhold such property from the receiver after the day specified in the notice given under section 1207 (Duties of receiver upon appointment), shall forfeit to the receiver double the value of such property, and the same may be recovered in an action by the receiver.

*NY CLS N-PCL § 1209 (2006)*

§ 1209. Recovery of assets

(a) Whenever a receiver, by verified petition to the supreme court at a special term held in the judicial district in which ~~the receiver, was appointed,~~ shall show that he or she has good reason to believe that any person has in his or her possession or under his or her control, or has wrongfully concealed, withheld or disposed of, any property of the corporation, or that any person can testify concerning such facts, the court, with or without notice, shall make an order requiring such person to appear before the court or a referee, at a time and place designated, and submit to an examination concerning such facts. In such order, or at any time thereafter, in its discretion, the court may enjoin

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and restrain such person from disposing of any property of the corporation in his possession or under his control.

(b) In any examination under such order, the court may confer immunity in accordance with the provisions of section six hundred nineteen-c of the code of criminal procedure; provided that no immunity shall be conferred except upon twenty-four hours prior written notice to the appropriate district attorney having an official interest therein.

(c) A person so ordered to appear shall be entitled to the same fees and mileage, to be paid at the time of serving the order, as are allowed by law to witnesses subpoenaed to attend and testify in an action in the supreme court, and shall be subject to the same penalties upon failure to appear and testify in obedience to such order as are provided by law in the case of witnesses who fail to obey a subpoena to appear and testify in an action.

(d) A person appearing for examination in obedience to such order shall be sworn, and shall be entitled to be represented on such examination by counsel, and may be cross-examined, or may make a voluntary statement in his own behalf concerning the subject of his examination.

(e) The testimony taken under such order shall be signed and sworn to by the person examined, and be filed in the office of the clerk of the county where the action or proceeding is pending. If it shall appear that any person is wrongfully concealing or withholding, or has in his or her possession or under his or her control, any property of the corporation, on notice to such person, the court may make an order requiring such person forthwith to deliver it to the receiver, subject to the further order of the court.

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*NY CLS N-PCL § 1210 (2006)*

§ 1210. Order of payment by receiver

(a) Laborers' wages shall be preferred claims and entitled to payment before any other creditors out of the assets of the corporation in excess of valid prior liens or encumbrances.

(b) The receiver shall subject to any prior liens or encumbrances distribute the residue of the moneys in his hands, among the creditors whose claims have been proved and allowed, as follows:

(1) All debts due by such corporation to the United States, and all debts entitled to a preference under the laws of the United States.

(2) All debts that may be owing by the corporation as trustee.

(3) Judgments against the corporation, to the extent of the value of the real property on which they are liens.

(4) All other creditors in proportion to their respective demands, without preference to specialty debts.

*NY CLS N-PCL § 1211 (2006)*

§ 1211. Final distribution by receiver

(a) If there remains property of the corporation after the first distribution, the receiver shall, within one year thereafter, make a final distribution among the creditors entitled thereto. Notice that such distribution will be the final distribution to creditors shall be published once a week for two consecutive weeks in a newspaper of general circulation in the county where the office of the corporation is located.

(b) A creditor or claimant who failed to prove his or her claim before the first distribution and who proves it before the final one shall receive the sum he or she would have been entitled to on the first distribution before any further distribution shall be made to other creditors or claimants.

(c) Unless the court shall otherwise direct, no other distribution shall be made thereafter to creditors, except to those having pending actions against the corporation or the receiver.

(d) After the final distribution to creditors, the receiver shall not be answerable to any creditor or claimant, unless his claim shall have been proved before or at the time specified in the notice of the final distribution.

*NY CLS N-PCL § 1212 (2006)*

§ 1212. Disposition of moneys retained; surplus; unclaimed distributions

(a) When any action pending at the time of final distribution shall be terminated, the receiver shall apply the moneys retained by the receiver to the payment of the amount recovered, and the receiver's necessary charges and expenses incurred therein.

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(b) [Until April 9, 2006] After the final distribution to creditors and after deducting the receiver's charges and expenses, the receiver shall distribute any surplus in the manner prescribed in section 1005 (Procedure after dissolution) or, if dissolution of the corporation is not involved, in such manner as the court shall order.

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(b) [Eff April 9, 2006] After the final distribution to creditors and after deducting the receiver's charges and expenses, the receiver shall distribute any surplus in the manner prescribed in section 1002-a (Carrying out the plan of dissolution and distribution of assets) or, if dissolution of the corporation is not involved, in such manner as the court shall order.

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*NY CLS N-PCL § 1213 (2006)*

§ 1213. Omission or default of receiver

Upon notice to the attorney-general and upon such notice to creditors or others interested as the court shall direct, the court may, in the furtherance of justice, relieve a receiver from any omission or default, on such conditions as may be imposed, and, on compliance therewith, confirm the receiver's action.

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NY CLS N-PCL § 1214 (2006)

§ 1214. Application by attorney-general for removal of receiver and to close receivership

(a) Whenever he or she deems it to be to the advantage of the members, creditors or other persons interested in the assets of any corporation for which a receiver has been appointed, the attorney-general may move:

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(1) For an order removing the receiver and appointing another receiver;

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(2) To compel the receiver to account;

(3) For such other and additional orders as may facilitate the closing of the receivership.

NY CLS N-PCL § 1215 (2006)

§ 1215. Resignation by receiver; filling any vacancy

(a) A receiver may petition the appointing court for an order to show cause why he or she should not be permitted to resign.

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(b) The petition shall be accompanied by a verified account of all the assets of the corporation received by the receiver, of all payments or other disposition thereof made by the receiver, of the remaining assets of the corporation in respect to which he or she was appointed receiver and the situation of the same, and of all his transactions as receiver. Thereupon, the court shall grant an order directing notice to be given to the sureties on his official bond and to all persons interested in the property of the corporation to show cause, at a time and place specified, why the receiver should not be permitted to resign. Such notice shall be published once in each week for six successive weeks in one or more newspapers as the court shall direct. If it shall appear that the proceedings of the receiver in the discharge of his trust have been fair and honest and that there is no good cause to the contrary, the court shall make an order permitting such receiver to resign. Thereupon he or she shall be discharged and his powers as receiver shall cease, but he or she shall remain subject to any liability incurred prior to the making of such order. The court, in its discretion, may require the expense of such proceeding to be paid by the receiver presenting the petition.

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(c) Any vacancy created by resignation, removal, death or otherwise, may be filled by the court, and the property of the receivership shall be delivered to the remaining receivers or, if there are none, to the successor appointed by the court. The court may summarily enforce delivery by order in the action or special proceeding in which the receiver was appointed.

NY CLS N-PCL § 1216 (2006)

§ 1216. Final accounting; notice; duty of attorney-general

(a) Within one year after qualifying, the receiver shall apply to the court for a final settlement of his accounts and for an order for distribution, or, upon notice to the attorney-general and to any governmental body or officer whose consent is required for the dissolution of the corporation, for an extension of time, setting forth the reasons therefor. If the receiver has not so applied for a settle-

ment of his accounts or for such extension of time, the attorney-general or any creditor or member may apply for an order that the receiver show cause why an accounting and distribution should not be had, and after the expiration of eighteen months from the time the receiver qualified, it shall be the duty of the attorney-general to apply for such an order on notice to the receiver.

(b) Before presenting a final account, the receiver shall give notice of his intention to file it by publication, under subparagraph (a)(1) of section 1207 (Duties of receiver upon appointment), setting forth the time and place of filing and presentation to the court. The receiver shall also give not less than eight days' written notice to the sureties on his official bond.

(c) Upon presentation of such account, the court shall hear the allegations, objections and proofs of all parties interested and allow or disallow such account, in whole or in part, and make a final order. The court may refer the account and the hearing, in whole or in part, to a referee who shall report thereon to the court.

*NY CLS N-PCL § 1217 (2006)*

§ 1217. Commissions

(a) A receiver shall be entitled, in addition to his necessary expenses, to such commissions upon the sums received and disbursed as may be allowed by the court, as follows:

(1) On the first twenty thousand dollars, not exceeding five percent;

(2) On the next eighty thousand dollars, not exceeding two and one-half percent; and

(3) On the remainder, not exceeding one percent.

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(b) If the commissions of the receiver so computed do not amount to one hundred dollars, the court in its discretion may allow such sum not exceeding one hundred dollars as shall be reasonable.

(c) When more than one receiver shall be appointed, the compensation herein provided shall be divided between them, as the court directs.

*NY CLS N-PCL § 1218 (2006)*

§ 1218. Special provisions relating to actions or special proceedings against foreign corporations

(a) In any action or special proceeding brought against a foreign corporation under this article, the following provisions shall apply:

(1) Service of the summons in such action may be made personally within the state of New York, by delivery of the same to any officer or director of the corporation, or by publication pursuant to an order obtained as hereinafter provided.

(2) An order directing service by publication of the summons shall be made upon application of a plaintiff in any such action and shall be founded upon a verified complaint, alleging that the defendant is a foreign corporation and has or may have or may be entitled to assets, credits, choses in action or other property, tangible or intangible within the state and that such corporation has been

dissolved, nationalized or that its authority or existence has been terminated or cancelled in the jurisdiction of its incorporation, or that it has ceased to conduct its activities, and upon an affidavit reciting that personal service of the summons cannot be effected within the state with due diligence and that a temporary receiver of its property within the state of New York has been appointed pursuant to this article in such action and that a copy of the order appointing the receiver has been served personally by or on behalf of such receiver upon a person, firm or corporation holding property, tangible or intangible, of the said foreign corporation, or against whom a claim or demand in favor of such foreign corporation exists and that demand therefor has been made upon such person, firm or corporation by or on behalf of such receiver.

(3) The order directing service of the summons shall require the publication thereof in a newspaper published in the state of New York in the English language at least once a week for four successive weeks, and shall also require the mailing on or before the date of the first publication of a copy of the summons, complaint and order to the corporation at its last known principal or head office in the state or country of its incorporation.

(4) In any such action, the summons shall be served personally or an order directing service thereof by publication shall be obtained and the first publication thereof made within sixty days after the appointment of the temporary receiver, and if served by publication, the service shall be made complete by the continuance thereof.

(5) If served by publication, service of the summons shall be deemed complete on the date of the last publication. The action shall be deemed commenced upon the issuance of the summons. The order appointing the receiver and the papers upon which the same is granted shall be filed in the office of the clerk of the court where the action is triable within ten days after the order is made.

(6) In the event that the defendant defaults in answering, or if after a trial the court is satisfied that the defendant has ceased to conduct its activities by reason of any thing or matter whatsoever, or that it has been dissolved, nationalized, or its authority or existence has been otherwise terminated or cancelled, the court shall thereupon direct judgment, appointing a permanent receiver and directing the receiver to liquidate the assets, credits, choses in action and property, tangible and intangible, in the state of New York of the said defendant, in the manner provided in this article.

(7) The time between the cessation of its activities by the corporation or its dissolution or nationalization or the termination or cancellation of its authority or existence and the appointment of a receiver in this state pursuant to this article, whichever time is longer, plus three years after such appointment, shall not be a part of the time limited by domestic or foreign laws for the commencement of an action or for the assertion of a claim therein by or on behalf of or against said corporation or by or against said receiver, whether or not said action or claim has heretofore been barred by any statute of limitations of this state or of any other state or country.

(8) The existence of and causes of action of or against such corporation existing at the time of its dissolution, nationalization, or the termination or cancellation of its authority or existence, or arising thereafter, shall not be deemed ended, abated or affected thereby, nor shall actions brought by or against such corporation or a receiver appointed hereunder or any remedy therein be deemed to have ended or abated or to have been affected by reason of such dissolution, nationalization, or termination or cancellation of its authority or existence. This provision shall apply to all property, tangible and intangible, debts, demands, and choses in action of such corporation within the state of New York, and to all litigation heretofore or hereafter brought in the courts of the state or of the

United States to which the corporation or the receiver of said corporation appointed pursuant to the provisions of this article is a party. Any receiver appointed pursuant to the provisions of this article may be substituted for such corporation in any action or proceeding pending in the courts of the state or of the United States to which such corporation is a party and may intervene in any action or proceeding which relates to or affects any of the assets or claims of the corporation and revive any action which shall have heretofore or which may hereafter have abated, and such dissolution, nationalization, or termination or cancellation of its authority or existence in the jurisdiction of its incorporation, or any confiscatory law or decree thereof, shall not be deemed to have any extra-territorial effect or validity as to the property, tangible or intangible, debts, demands or choses in action of such corporation within the state or any debts or obligations owing to such corporation from persons, firms or corporations residing, sojourning or doing business in the state. Nothing contained in this subdivision shall be deemed to validate claims for or causes of action or actions to recover property located in or moneys payable in the jurisdiction of incorporation which are unenforceable under the laws of such jurisdiction.

(9) If any receiver or trustee has heretofore been appointed in this state for such corporation or its property in any action or proceeding, either before or supplementary to judgment, otherwise than in an action brought pursuant to this article, such receiver or trustee may be appointed or continued as the receiver in any action brought pursuant to the provisions of this article.

(10) The appointment of a receiver or the pendency of an action for the appointment of such receiver, shall until such receiver shall be discharged or until such action shall have terminated, be a bar to any subsequent application or action for the appointment of a receiver of the assets of the same corporation.

(11) An action shall be commenced within three years from the discovery by the plaintiff or his predecessor in interest, of any asset of said corporation in the state of New York.

*NY CLS N-PCL § 1301 (2006)*

§ 1301. Authorization of foreign corporations

(a) A foreign corporation shall not conduct activities in this state until it has been authorized to do so as provided in this article. A foreign corporation may be authorized to conduct in this state any activities which may be conducted lawfully in this state by a domestic corporation, to the extent that it is authorized to conduct such activities in the jurisdiction of its incorporation, but no other activities.

(b) Without excluding other acts which may not constitute conducting activities in this state, a foreign corporation shall not be considered to be conducting activities in this state, for the purposes of this chapter, by reason of doing in this state any one or more of the following acts:

(1) Maintaining or defending any action or proceeding, whether judicial, administrative, arbitral or otherwise, or effecting settlement thereof or the settlement of claims or disputes.

(2) Holding meetings of its directors or its members.

(3) Maintaining bank accounts.



(4) Maintaining offices or agencies only for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.

(5) Granting funds.

(6) Distributing information to its members.

(c) The specification in paragraph (b) does not establish a standard for activities which may subject a foreign corporation to service of process under this chapter or any other statute of this state.

(d) A foreign corporation whose corporate name is not acceptable for authorization pursuant to sections 301 and 302 of this chapter, may submit in its application for authority pursuant to section thirteen hundred four of this chapter, a fictitious name under which it shall do business in this state. A fictitious name submitted pursuant to this section shall be subject to the provisions of subparagraphs 2 through 9 of paragraph (a) of section 301 and section 302 of this chapter. A foreign corporation authorized to conduct activities in this state under a fictitious name pursuant to this section, shall use such fictitious name in all of its dealings with the secretary of state and in the conduct of its activities in this state. The provisions of section one hundred thirty of the general business law shall not apply to any fictitious name filed by a foreign corporation pursuant to this section.

*NY CLS N-PCL § 1302 (2006)*

§ 1302. Application to existing authorized foreign corporations

Every foreign corporation which on the effective date of this chapter is authorized to conduct activities in this state under a certificate of authority heretofore issued to it by the secretary of state shall continue to have such authority. Such foreign corporation, its members, directors, and officers shall have the same rights, franchises, and privileges and shall be subject to the same limitations, restrictions, liabilities, and penalties as a foreign corporation authorized under this chapter, its members, directors, and officers respectively. Reference in this chapter to an application for authority shall, unless the context otherwise requires, include the statement and designation and any amendment thereof required to be filed by the secretary of state under prior statutes to obtain a certificate of authority.

**Deleted:** A foreign corporation may by amendment to its certificate of authority set forth the type of corporation it is under section 201 (Purposes); and in the absence of such amendment an authorized foreign corporation shall be a Type B corporation.

*NY CLS N-PCL § 1303 (2006)*

§ 1303. Violations

The attorney-general may bring an action to restrain a foreign corporation from conducting in this state without authority any activities for the conduct of which it is required to be authorized in the state, or from conducting in this state any activities not set forth in its application for authority or certificate of amendment filed by the department of state. The attorney-general may bring an action or special proceeding to annul the authority of a foreign corporation to conduct in this state any activities not set forth in its application for authority or certificate of amendment or the authority of which was obtained through fraudulent misrepresentation or concealment of a material fact or to enjoin or annul the authority of any foreign corporation which within this state contrary to law has done or omitted any act which if done by a domestic corporation would be a cause for its dissolu-

tion under section 1101 (Attorney-general's action for judicial dissolution) or to annul the authority of a foreign corporation that has been dissolved or has had its authority or existence otherwise terminated or cancelled in the jurisdiction of its incorporation. The attorney-general shall deliver a certified copy of the order of annulment to the department of state. Upon the filing thereof by the department of state the authority of the foreign corporation to conduct activities in this state shall be annulled. The secretary of state shall continue as agent of the foreign corporation upon whom process against it may be served in any action or special proceeding based upon any liability or obligation incurred by the foreign corporation within the state prior to the filing of the certified copy of the order of annulment by the department of state.

*NY CLS N-PCL § 1304 (2006)*

§ 1304. Application for authority; contents

(a) A foreign corporation may apply for authority to conduct activities in this state by filing an application entitled "Application for authority of . . . . . (name of corporation) under *section 1304 of the Non-Profit Corporation Law*." The application shall be signed and delivered to the department of state. It shall set forth:

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(1) The name of the foreign corporation.

(2) The fictitious name the corporation agrees to use in this state pursuant to section 1301 of this chapter, if applicable.

(3) The jurisdiction and date of its incorporation.

(4) That the corporation is a foreign corporation as defined in subparagraph (a)(7) of section 102 (Definitions); a statement of its purposes to be pursued in this state and of the activities which it proposes to conduct in this state; a statement that it is authorized to conduct those activities in the jurisdiction of its incorporation. (5) The county within this state in which its office is to be located.

**Deleted:** the type of corporation it shall be under section 201 (Purposes)

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(6) A designation of the secretary of state as its agent upon whom process against it may be served and the post office address within or without this state to which the secretary of state shall mail a copy of any process against it served upon him or her.

(7) If it is to have a registered agent, his name and address within this state and a statement that the registered agent is to be its agent upon whom process against it may be served.

(8) A statement that the foreign corporation has not, since its incorporation or since the date its authority to conduct activities in this state was last surrendered, done any act in this state, except as set forth in paragraph (b) of section 1301 (Authorization of foreign corporations); or in lieu of such statement the consent of the state tax commission to the filing of the application shall be attached thereto.

(9) Any provision required by any governmental body or officer or other person or body as a condition for giving the consent or approval required for the filing of such application for authority, provided such provision is not inconsistent with this chapter or any other statute of this state. A corporation whose statement of purposes to be conducted in this state specifically includes the establishment or operation of a child day care center, as that term is defined in section three hundred ninety of the social services law, shall provide a certified copy of any application for authority and

any amendment thereto involving such corporation to the office of children and family services within thirty days after the filing of such application or amendment with the department of state.

(b) Attached to the application for authority shall be a certificate by an authorized officer of the jurisdiction of its incorporation that the foreign corporation is an existing corporation. If such certificate is in a foreign language, a translation thereof under oath of the translator shall be attached thereto.

(c) If the application for authority sets forth any purpose or activity for which a domestic corporation could be formed only with the consent or approval of any governmental body or officer, or other person or body under section 404 (~~Notices, approvals and consents~~), ~~or which, if it was contained in the certificate of incorporation of a domestic corporation, would subject the domestic corporation to the requirement under such section 404 of providing a certified copy of the certificate of incorporation to a governmental body or officer or other person or body, then (i) any such consent or approval shall be endorsed on or annexed to the application for authority or (ii) a certified copy of the application for authority shall be provided by the foreign corporation to such governmental body or officer or other person or body within thirty days after the filing of the application for authority.~~

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#### *NY CLS N-PCL § 1305 (2006)*

##### § 1305. Application for authority; effect

Upon filing by the department of state of the application for authority the foreign corporation shall be authorized to conduct in this state any activities set forth in the application. Such authority shall continue so long as the corporation retains its authority to conduct such activities in the jurisdiction of its incorporation and its authority to conduct activities in this state has not been surrendered, suspended or annulled in accordance with law.

#### *NY CLS N-PCL § 1306 (2006)*

##### § 1306. Powers of authorized foreign corporations

An authorized foreign corporation shall have such powers as are permitted by the laws of the jurisdiction of its incorporation but no greater powers than those of a domestic corporation formed for the purposes set forth in the application for authority.

#### *NY CLS N-PCL § 1307 (2006)*

##### § 1307. Tenure of real property

A foreign corporation may acquire and hold real property in this state in furtherance of its corporate purposes and may convey the same by deed or otherwise in the same manner as a domestic corporation.

#### *NY CLS N-PCL § 1308 (2006)*

§ 1308. Amendments or changes

(a) An authorized foreign corporation may amend or change its application for authority from time to time in any and as many of the following respects as may be desired if the amendments contain only such provisions as might be lawfully contained in an application for authority at the time of making such amendment:

(1) To change its corporate name if such change has been effected under the laws of the jurisdiction of its incorporation.

(2) To change its fictitious name filed pursuant to paragraph (d) of section 1301 of this chapter, to another fictitious name, if its true corporate name is not available for use in this state.

(3) To delete its fictitious name filed pursuant to paragraph (d) of section 1301 of this chapter, if its true corporate name is now available for use in this state.

(4) To adopt a fictitious name when the corporate name is changed and is not available in this state.

(5) To enlarge, limit or otherwise change the activities which it proposes to conduct in this state.

(6) To change the location of its office in this state.

(7) To specify or change the post office address to which the secretary of state shall mail a copy of any process against it served upon him or her.

(8) To make, revoke or change the designation of a registered agent or to specify or change his address.

*NY CLS N-PCL § 1309 (2006)*

§ 1309. Certificate of amendment; contents, effect

(a) To accomplish such amendment a certificate, entitled "Certificate of amendment of application for authority of . . . . . (name of corporation) under *section 1309 of the ~~Non-Profit~~ Corporation Law*," shall be signed and delivered to the department of state. It shall set forth:

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(1) The name of the foreign corporation as it appears on the index of names of existing domestic and authorized foreign corporations of any type or kind in the department of state and the fictitious name the corporation has agreed to use in this state pursuant to paragraph (d) of section 1301 of this chapter.

(2) The jurisdiction of its incorporation.

(3) The date it was authorized to conduct activities in this state.

(4) Each amendment effected thereby.

(5) If the true corporate name of the foreign corporation is to be changed, a statement that the change of name has been effected under the laws of the jurisdiction of its incorporation and the date the change was so effected.

(6) If the activities it proposes to conduct in this state are to be enlarged, limited or otherwise changed, a statement that it is authorized to conduct in the jurisdiction of its incorporation the activities which it proposes to conduct in this state.

(b) If an authorized foreign corporation has changed its name in the jurisdiction of its incorporation, it shall deliver to the department of state within twenty days after the change became effective in that jurisdiction a certificate of amendment under paragraph (a). Upon its failure to deliver such certificate, its authority to conduct activities in this state shall upon the expiration of said twenty days be suspended. The filing by the department of state of a certificate of amendment changing the corporation name within one hundred twenty days after the effective date of the change of name in the jurisdiction of its incorporation shall annul the suspension and its authority to conduct activities in this state shall be restored and continue as if no suspension had occurred. The secretary of state shall continue, during such suspension, as agent of the foreign corporation upon whom process against the foreign corporation may be served in the manner set forth in paragraph (b) of section 306 (Service of process).

(c) If a certificate of amendment of application for authority adds, changes or eliminates a purpose, power or provision the inclusion of which in an application for authority requires consent or approval of, or requires the corporation to provide a certified copy of the filed document to, any governmental body or officer or other person or body under Sections 404 or 806 of this chapter, or if the amendment changes the name of a corporation subject to either such requirement, then (i) any such consent or approval shall be endorsed on or annexed to the certificate of amendment of application for authority before it is filed or (ii) the corporation shall provide a certified copy of such certificate, within thirty days after it is filed, to each governmental body or officer or other person or body required to receive such a copy. No amendment to a certificate of authority shall be adopted the effect of which would be to use corporate assets in a manner inconsistent with specific purposes, if any, for which funds were given to a foreign corporation.

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#### NY CLS N-PCL § 1310 (2006)

#### § 1310. Certificate of change; contents

(a) In lieu of a certificate of amendment, an authorized foreign corporation, upon compliance with this section, may make any or all of the following changes in its application for authority:

(1) To change the location of its office in this state.

(2) To specify or change the post office address to which the secretary of state shall mail a copy of any process against it served upon him or her.

(3) To make, revoke or change the designation of a registered agent or specify or change his address.

(b) To accomplish such change, a certificate entitled "Certificate of change of application for authority of . . . . . (name of corporation) under section 1310 of the Non-Profit Corporation Law" shall be signed and delivered to the department of state. It shall set forth:

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(1) The name of the foreign corporation as it appears on the index of names of existing domestic and authorized foreign corporations of any type of kind in the department of state and the fictitious name the corporation has agreed to use in this state pursuant to paragraph (d) of section 1301 of this chapter.

(2) The jurisdiction of its incorporation.

(3) The date it was authorized to conduct activities in this state.

(4) Each change effected thereby.

(c) A certificate of change of application for authority which changes only the post office address to which the secretary of state shall mail a copy of any process against an authorized foreign corporation served upon him or her or which changes the address of its registered agent, provided such address is the address of a person, partnership or other corporation whose address, as agent, is the address to be changed or who has been designated as registered agent for such authorized foreign corporation, may be signed and delivered to the department of state by such agent. The certificate of change of application for authority shall set forth the statements required under subparagraphs (1), (2), (3) and (4) of paragraph (b) of this section; that a notice of the proposed change was mailed by the party signing the certificate to the authorized foreign corporation not less than thirty days prior to the date of delivery to the department and that such corporation has not objected thereto; and that the party signing the certificate is the agent of such foreign corporation to whose address the secretary of state is required to mail copies of process or the registered agent, if such be the case. A certificate signed and delivered under this paragraph shall not be deemed to effect a change of location of the office of the corporation in whose behalf such certificate is filed.

*NY CLS N-PCL § 1311 (2006)*

§ 1311. Surrender of authority

(a) An authorized foreign corporation desiring to surrender its authority shall deliver to the department of state a certificate entitled "Certificate of surrender of authority of . . . . . (name of corporation) under section 1311 of the Non-Profit Corporation Law." The certificate shall be signed. It shall set forth:

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(1) The name of the foreign corporation as it appears on the index of names of existing domestic and authorized foreign corporations of any type or kind in the department of state and the fictitious name the corporation has agreed to use in this state pursuant to paragraph (d) of section 1301 of this chapter.

(2) The jurisdiction of its incorporation.

(3) The date it was authorized to conduct activities in this state.

(4) That it surrenders its authority to conduct activities in this state.

(5) That it revokes the authority of its registered agent, if any, previously designated and consents that process against it in any action or special proceeding based upon any liability or obligation incurred by it within this state before the filing of the certificate of surrender may be served on

the secretary of state after the filing thereof in the manner set forth in paragraph (b) of section 306 (Service of process).

(6) A post office address within or without this state to which the secretary of state shall mail a copy of any process against it served upon him or her.

(b) The department shall not file such certificate unless the consent of the state tax commission to the surrender of authority is attached thereto.

(c) The authority of the foreign corporation to conduct activities in this state shall terminate on the filing by the department of state of the certificate of surrender of authority.

(d) The post office address specified under subparagraph (a) (6) may be changed by delivering to the department of state a certificate, entitled "Certificate of amendment of certificate of surrender of authority of . . . . . (name of corporation) under *section 1311 of the Non-Profit Corporation Law*." The certificate shall be signed. It shall set forth:

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(1) The name of the foreign corporation.

(2) The jurisdiction of its incorporation.

(3) The date its certificate of surrender of authority was filed by the department of state.

(4) The changed post office address, within or without this state, to which the secretary of state shall mail a copy of any process against it served upon him or her.

*NY CLS N-PCL § 1312 (2006)*

§ 1312. Termination of existence

When an authorized foreign corporation is dissolved or its authority or existence is otherwise terminated or cancelled in the jurisdiction of its incorporation or when such foreign corporation is merged into or consolidated with another foreign corporation, a certificate of the secretary of state, or official performing the equivalent function as to corporate records, of the jurisdiction of incorporation of such foreign corporation attesting to the occurrence of any such event or a certified copy of an order or decree of a court of such jurisdiction directing the dissolution of such foreign corporation, the termination of its existence or the cancellation of its authority shall be delivered to the department of state. The filing of the certificate, order or decree shall have the same effect as the filing of a certificate of surrender of authority under section 1311 (Surrender of authority). The secretary of state shall continue as agent of the foreign corporation upon whom process against it may be served in the manner set forth in paragraph (b) of section 306 (Service of process), in any action or special proceeding based upon any liability or obligation incurred by the foreign corporation within this state prior to the filing of such certificate, order or decree and he or she shall promptly cause a copy of any such process to be mailed by registered mail, return receipt requested, to such foreign corporation at the post office address on file in his office specified for such purpose. The post office address may be changed by signing and delivering to the department of state a certificate of change setting forth the statements required under section 1310 (Certificate of change, contents) to effect a change in the post office address under subparagraph (a) (4) of section 1308 (Amendments or changes).



*NY CLS N-PCL § 1313 (2006)*

§ 1313. Actions or special proceedings by unauthorized foreign corporations

(a) A foreign corporation conducting activities in this state without authority shall not maintain any action or special proceeding in this state unless and until such corporation has been authorized to conduct activities in this state and it has paid to the state all fees, penalties and franchise taxes, if any, for the years or parts thereof during which it conducted activities in this state without authority. This prohibition shall apply to any successor in interest of such foreign corporation.

(b) The failure of a foreign corporation to obtain authority to conduct activities in this state shall not impair the validity of any contract or act of the foreign corporation or the right of any other party to the contract to maintain any action or special proceeding thereon, and shall not prevent the foreign corporation from defending any action or special proceeding in this state.

*NY CLS N-PCL § 1314 (2006)*

§ 1314. Actions or special proceedings by foreign corporations

An action or special proceeding may be maintained by a foreign corporation, in like manner and subject to the same limitations, as an action or special proceeding brought by a domestic corporation, except as otherwise prescribed by statute.

*NY CLS N-PCL § 1315 (2006)*

§ 1315. Actions or special proceedings against foreign corporations

(a) An action or special proceeding against a foreign corporation may be maintained by a resident of this state or by a domestic corporation of any type or kind for any cause of action.

(b) Except as otherwise provided in this article, an action or special proceeding against a foreign corporation may be maintained by another foreign corporation of any type or kind or by a nonresident in the following cases only:

(1) Where the action is brought to recover damages for the breach of a contract made or to be performed within this state, or relating to property situated within this state at the time of the making of the contract.

(2) Where the subject matter of the litigation is situated within this state.

(3) Where the cause of action arose within this state, except where the object of the action or special proceeding is to affect the title of real property situated outside this state.

(4) Where, in any cause not included in the preceding subparagraphs, a non-domiciliary would be subject to the personal jurisdiction of the courts of this state under *section 302 of the civil practice law and rules*.

(5) Where the defendant is a foreign corporation conducting activities or authorized to conduct activities in this state.

(c) Paragraph (b) does not apply to a corporation which was formed under the laws of the United States and which maintains an office in this state.

*NY CLS N-PCL § 1316 (2006)*

§ 1316. Record of members

(a) Any resident of this state who is a member of a foreign corporation conducting activities in this state, upon at least five days' written demand may require such foreign corporation to produce a record of its members setting forth the names and addresses of all members, the number and class of capital certificates held by each and the dates when they respectively became the owners of record thereof, and shall have the right to examine in person or by agent or attorney at the office of the foreign corporation in this state or at the office of its transfer agent or registrar in this state or at such other place in any county in this state in which the foreign corporation is conducting activities as may be designated by the foreign corporation during the usual business hours, a record of members or an exact copy of the record of members certified as correct by the corporate officer or agent responsible for keeping or producing such record and to make extracts therefrom. In the case of a foreign corporation having shares, a record of shareholders shall for the purpose of this section be regarded as a record of members, and holders of voting trust certificates representing such shares shall for the purpose of this section be regarded as members. A corporation requested to provide information pursuant to this paragraph shall make available such information in the format in which such information is maintained by the corporation and shall not be required to provide such information in any other format.

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**Deleted:** or any resident of this state authorized in writing by at least five percent of the members, entitled to vote, of the foreign corporation,

(b) An examination authorized by paragraph (a) may be denied to such member upon his refusal to furnish to the foreign corporation or its transfer agent or registrar an affidavit that such inspection is not desired for a purpose which is in the interests of a business or object other than the activities of the foreign corporation and that such member or other person has not within five years sold or offered for sale any list or record of members of any corporation of any type or kind, whether or not formed under the laws of this state, or aided or abetted any person in procuring any such list or record of members for any such purpose.

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(c) Upon refusal by the foreign corporation or by an officer or agent of the foreign corporation to produce for examination or to permit an examination of the record of members as herein provided, the person making the demand for production and examination may apply to the supreme court in the judicial district where the office of the foreign corporation within this state is located, upon such notice as the court may direct, for an order directing the foreign corporation, its officer or agent, to show cause why an order should not be granted directing such production and permitting such examination by the applicant. Upon the return day of the order to show cause, the court shall hear the parties summarily, by affidavit or otherwise, and if it appears that the applicant is qualified and enti-

tled to such examination, the court shall grant an order compelling such production for examination and awarding such further relief as to the court may seem just and proper.

(d) Nothing herein contained shall impair the power of courts to compel the production for examination of the books of a foreign corporation. The record of members specified in paragraph (a) shall be prima facie evidence of the facts therein stated in favor of the plaintiff in any action or special proceeding against such foreign corporation or any of its officers, directors or members.

*NY CLS N-PCL § 1317 (2006)*

§ 1317. Voting trust records

(a) A voting trustee, appointed under a voting trust agreement to vote the shares of a foreign corporation conducting activities in this state, who either has an office in this state or has designated a transfer agent within this state, shall produce for examination and permit to be examined in this state, at the office of the foreign corporation or at his office or at the office of such transfer agent, a record of voting trust certificate holders setting forth their names, alphabetically arranged, and addresses, the number and class of shares represented by the certificates held by them respectively and the dates when they respectively became the owners thereof, upon the written demand of any resident of this state who shall have been a voting trust certificate holder or a shareholder of the foreign corporation for at least six months immediately preceding his demand, or of any resident of this state holding, or thereunto authorized in writing by the holders of, at least five percent of any class of the outstanding shares of such foreign corporation, either directly or as holders of voting trust certificates for such shares, subject to the same terms and conditions set forth with respect to the right of examination of the record of members of the foreign corporation in section 1316 (Record of members).

(b) The voting trustee shall deposit an exact copy of the voting trust agreement with the foreign corporation at its office in this state or at the office of the transfer agent in this state.

(c) The copy of the voting trust agreement shall be subject to the same right of examination by voting trust certificate holders and by shareholders of the foreign corporation as is the record of members of a corporation under section 621 (Books and records; right of inspection, prima facie evidence).

(d) Upon refusal by a voting trustee or his transfer agent to produce for examination or to permit an examination of the record of voting trust certificate holders or of such copy of the voting trust agreement as herein provided, the person making the demand may apply to the supreme court, upon such notice as the court may direct, for an order directing the voting trustee or his transfer agent to show cause why an order should not be granted directing such production and permitting such examination. Upon the return day of the order to show cause, the court shall hear the parties summarily, by affidavit or otherwise, and if it appears that the applicant is entitled to such examination, the court shall grant an order compelling such production for examination and awarding such further relief as to the court may seem just and proper.

(e) Where the voting trust agreement shall vest in the voting trustee the right to vote the shares of a foreign corporation which has an office in this state for conducting activities and either the principal activity of which is conducted within this state or the greater part of its property is located within this state, the voting trust agreement is an express trust created under the laws of this state and the supreme court upon the petition of a voting trust certificate holder may exercise such power over the trustee named therein as is granted to the court by *section 7-2.6 of the estates, powers and trusts law*.

*NY CLS N-PCL § 1318 (2006)*

§ 1318. Liabilities of directors and officers of foreign corporations

(a) Except as otherwise provided in this chapter, the directors and officers of a foreign corporation conducting activities in this state are subject, to the same extent as directors and officers of a domestic corporation, to the provisions of:

- (1) Section 719 (Liability of directors in certain cases) except subparagraph (a)(4) thereof, and
- (2) Section 720 (Action against directors and officers for misconduct).

(b) Any liability imposed by paragraph (a) may be enforced in, and such relief granted by, the courts in this state, in the same manner as in the case of a domestic corporation.

*NY CLS N-PCL § 1319 (2006)*

§ 1319. Liability of foreign corporations for failure to disclose required information

A foreign corporation conducting activities in this state shall, in the same manner as a domestic corporation, disclose to its members of record who are residents of this state the information required under Article 5 and shall be liable as provided in section 521 (Liability for failure to disclose required information) for failure to comply in good faith with these requirements.

*NY CLS N-PCL § 1320 (2006)*

§ 1320. Applicability of other provisions

(a) In addition to articles 1 (Short title; definitions; application; certificates; miscellaneous) and 3 (Corporate name and service of process) and the other sections of article 13, the following provisions, to the extent provided therein, shall apply to a foreign corporation conducting activities in this state, its directors, officers and members:

(1) Section 623 (Members' derivative action brought in the right of the corporation to procure a judgment in its favor).

(2) Sections 721 (Exclusivity of statutory provisions for indemnification of directors and officers) through 727 (Insurance for indemnification of directors and officers), inclusive.

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(3) Section 906 (Merger or consolidation of domestic and foreign corporations).

NY CLS N-PCL § 1321 (2006)

§ 1321. Exemption from certain provisions

(a) Notwithstanding any other provision of this chapter, a foreign corporation conducting activities in this state which is authorized under this article, its directors, officers and members, shall be exempt from the provisions of paragraph (e) of section 1317 (Voting trust records), subparagraph (a)(1) of section 1318 (Liabilities of directors and officers of foreign corporations), and subparagraph (a)(2) of section 1320 (Applicability of other provisions) if when such provision would otherwise apply:

~~the corporation's~~ principal activities are conducted outside this state; the greater part of its property is located outside this state; and:

(a) less than one third of its members are residents of this state; or

(b) less than ten per cent of its annual revenues is derived from solicitation of funds within this state; or

(c) less than one half of its revenues for the preceding three fiscal years, or such portion thereof as the foreign corporation was in existence, was derived from sources within this state.

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**Deleted:** is a Type A corporation under this chapter; its

**Deleted:** (2) The corporation is a Type B corporation under this chapter; its principal activities are conducted outside this state; the greater part of its property is located outside this state; and

**Deleted:** (3) The corporation is a Type C corporation under this chapter; its principal activities are conducted outside this state; the greater part of its property is located outside this state; and

NY CLS N-PCL § 1401 (2006)

§ 1401. Private and family cemetery corporations

(a) Private cemetery corporation. Seven or more persons may become a private cemetery corporation by setting off for a private cemetery enclosed real property, to the extent of not more than three acres, and by electing at a meeting of the owners of the property so set off, at which not less than seven shall be present, three of their number to be directors, to hold office for five years. The chairman and secretary of such meeting shall make, sign and acknowledge, and file in the office of the clerk of the county in which such real property is situated, a certificate containing the name of the corporation, a description of the lands so purchased or set apart, and the names of the directors. No such cemetery shall be located within one hundred rods of any dwelling-house without the written consent of the owner thereof. Additional lands not exceeding three acres may be acquired by a private cemetery corporation; but no additional lands so purchased or otherwise acquired shall be used for the purpose of burial within three hundred feet of any dwelling without the written consent of the owner thereof.

(b) Removal of remains from private cemeteries to other cemeteries. The supervisor of any town containing a private cemetery may remove any body interred in such cemetery to any other cemetery within the town, if the owners of such cemeteries and the next of kin of the deceased consent to such removal. The owners of a private cemetery may remove the bodies interred therein to any other cemetery within such town, or to any cemetery designated by the next of kin of the deceased.

Notice of such removal shall be given within twenty days before such removal personally or by certified mail to the next of kin of the deceased if known and to the clerk and historian of the county in which such real property is situated and notice shall be given to the New York state department of state, division of cemeteries. If any of the deceased are known to be veterans, the owners shall also notify the division of veterans' affairs. In the absence of the next of kin, the county clerk, county historian or the division of veterans' affairs may act as a guardian to ensure proper reburial.

(c) Family cemetery corporations. Any person, by deed or devise, may dedicate land to be used exclusively for a family cemetery. The executors, administrators or trustees of a deceased person, with the written authority of all of his surviving heirs, next of kin, devisees and legatees, executed in person or by an attorney, or if infants, by legal guardian, may dedicate lands of such deceased person exclusively for a family cemetery, or may purchase with the funds of the estate, suitable lands therefor. The land so dedicated shall not exceed three acres, not be located within one hundred rods of a dwelling-house, without the consent of the owner, unless such land, at the time of dedication, is in actual use for burial or cemetery purposes within the limits of a city. The instrument dedicating such land shall describe the same, may appoint directors to manage such cemetery, prescribe, or provide for making rules, directions or by-laws for such management, direct the manner of choosing successors to the directors, specify their qualifications, and grant to them and their successors money or personal property as a fund for maintaining, improving and embellishing the cemetery, in accordance with the deed or will, or the written authority of the heirs, next of kin, devisees and legatees. The instrument dedicating land for a family cemetery, together with the authority, if any, of the heirs, next of kin, devisees and legatees of the deceased person, shall be filed in the office of the county clerk of each county in which the cemetery is to be situated. The directors before entering on their duties, shall file in the office of the county clerk of each such county, a written acceptance of their appointment; and thereupon they and their successors shall constitute a corporation under the name designated in such instrument. A fund created by will for the purpose of maintaining, improving and embellishing such a cemetery shall not exceed ten per centum of the net value of the estate of the testator. Such corporation before receiving any property, money or funds for improving, maintaining and embellishing the cemetery, shall execute to the surrogate of the county in which such real property is situated, a bond with sureties, or the bond of a surety company, approved by him, in a penalty of twice the principal sum of the fund placed in charge of the corporation, conditioned for the faithful preservation and application thereof according to the rules, directions or by-laws prescribed in the instrument under which the appointment of such directors was made, and renew such bond or execute a new bond whenever required so to do by such surrogate. At least once in each year and oftener if required by the surrogate the corporation shall file with him a verified account of its receipts and expenditures on account of the funds in its hands, or under its control, together with vouchers for all disbursements. Any person may bequeath or transfer to, and any such corporation may take, money or personal property by will, deed or other transfer, upon trust, to hold and apply to dispose of the same for the purpose of maintaining, improving and embellishing any lot, plot or portion of such cemetery, either according to the discretion of the directors, or for such time and upon such terms and conditions, if any, as to the application, investment and reinvestment of the principal and income and otherwise as shall be stated in the instrument creating the trust as agreed upon, but no such trust fund created by will shall exceed ten per centum of the net value of the estate of the testator. The corporation shall give security and account for such money or personal property as hereinbefore provided.

If security is furnished by a surety company bond, the reasonable expense thereof shall be a charge against the funds of the corporation.

(d) Private and family cemetery corporations; prohibitions.

**Deleted:** Type of corporation. A family or private cemetery corporation is a type B corporation under this chapter.¶

**Deleted:** (e)

- (1) No private or family cemetery corporation shall, directly or indirectly:
- (i) sell, or have, enter into or perform a lease of any of its real property to a funeral entity, or use any of its property for location of a funeral entity;
  - (ii) commingle its funds with a funeral entity;
  - (iii) direct or carry on its business or affairs with a funeral entity;
  - (iv) authorize control of its business or affairs by a funeral entity;
  - (v) engage in any sale or cross-marketing of goods or services with a funeral entity;
  - (vi) have, enter into or perform a management or service contract for cemetery operations with a funeral entity; or
  - (vii) have, enter into or perform a management contract with any entity, other than a non-profit cemetery corporation.

**Deleted:** not-for-profit

(2) Only the provisions of subparagraphs (i) and (ii) of subdivision one of this paragraph shall apply to cemetery corporations with thirty acres or less of real property dedicated to cemetery purposes, and only to the extent the sale or lease is of real property dedicated to cemetery purposes, and such cemeteries shall not engage in the sale of funeral home goods or services, except if such goods and services are otherwise permitted to be sold by cemeteries.

(3) For the purposes of this paragraph, "funeral entity" means a person, partnership, corporation, limited liability company or other form of business organization providing funeral home services, or owning, controlling, conducting or affiliated with a funeral home, any subsidiary thereof or an officer, director or stockholder having a ten per centum or greater proprietary, beneficial, equitable or credit interest in a funeral home.

*NY CLS N-PCL § 1402 (2006)*

§ 1402. Fire corporations

(a) Certificate of incorporation; additional contents.

In addition to the requirements of section 402 (Certificate of incorporation; contents), the certificate of incorporation of a fire corporation shall state the precise boundaries of the territory in which the corporation intends to operate.

(b) Appointment of firemen.

**Deleted:** Type of corporation. A fire corporation is a Type B corporation under this chapter.¶

**Deleted:** (c)

- (1) A person shall not be eligible to be named in the certificate of incorporation of a fire corporation unless he shall be at least eighteen years of age and a resident of a city, village, fire district, or town outside of villages and fire districts, where the fire corporation intends to operate.



(2) If the fire corporation becomes part of the fire department of a city, village or fire district, a person shall not be eligible to be elected as a member or to continue as a member except as provided by law for volunteer members of the fire companies in such city, village or fire district.

(3) In towns outside of villages and fire districts, the consent of a majority of the members of the town board to the formation of a fire corporation shall constitute an appointment of the persons named in the certificate of incorporation as town firemen. Thereafter, other eligible persons may be elected as members pursuant to the by-laws of the fire corporation, but the election of a member must be approved by the town board of each town which consented to the formation of the fire corporation. Such a person shall be a resident of the territory specified in the certificate of incorporation or of territory outside such boundaries which is afforded fire protection by the fire corporation pursuant to a contract for fire protection under which a cash consideration is received by the corporation or for which negotiations for renewal of such a contract are pending. The membership of any volunteer member shall terminate when he ceases to be a resident of such inside or outside territory, except that the corporation may authorize his continued membership where he notifies the secretary of the fire corporation (a) that he plans to change his residence to a territory which is not in such inside or outside territory, and (b) that by reason of his residence in the vicinity or his usual occupation he will be available to render active service as a volunteer fireman in either such inside or such outside territory. Voting for such authorization shall be pursuant to the by-laws. Such authorization shall not become effective unless approved by resolution of the town board of each town which consented to the formation of the corporation. Any membership so continued shall terminate when the member can no longer meet the requirements of this subparagraph. A person who cannot meet the residence requirements of this subparagraph may be elected to membership as a volunteer member if by reason of his residence in the vicinity or his usual occupation he will be available to render active service as a volunteer fireman in such inside or outside territory. Voting for such election shall be pursuant to the by-laws. Such election shall not become effective unless approved by resolution of the town board of each town which consented to the formation of the corporation. Such membership shall terminate when the member can no longer meet the requirements of this subparagraph. The election or continuance of any person as a member shall be deemed to have been approved by the town board pursuant to this subparagraph in the event that no action is taken by the town board, either approving or disapproving, within forty days in the case of residents of the territory specified in the certificate of incorporation or of outside contract territory, and within seventy days in the case of all others, after service of written notice of such election or continuance of membership shall have been made by the secretary of the corporation upon the town clerk, either personally or by mail. The membership of any volunteer fireman shall not be continued pursuant to this subparagraph, and persons who do not reside in the territory specified in the certificate of incorporation or in territory protected pursuant to a contract for fire protection shall not be elected to membership, if, by so doing, the percentage of such nonresident members in the fire corporation would exceed forty-five per centum of the actual membership thereof. Nonresidents of the territory specified in the certificate of incorporation whose volunteer membership has been authorized or continued pursuant to this subparagraph may be elected or appointed to any office in the fire corporation and shall have all the powers, duties, immunities, and privileges of resident volunteer members except a non-resident of this state whose membership has been continued pursuant to this subparagraph, or who was elected to membership pursuant to this subparagraph, shall not be considered to be performing any firemanic duty, or to be engaged in any firemanic activity, as a member of the fire company while he is outside of this state unless and until he has first reported to the officer or fireman in command of his fire department, or any company, squad or other unit thereof, engaged or

to be engaged in rendering service outside this state, or has received orders or authorization from an officer of the fire department or fire company to participate in or attend authorized activities outside of this state in the same manner as resident members of the fire company. A person shall not be eligible to volunteer membership in any other fire corporation or fire company at one time. The provisions of this subparagraph shall not be deemed to authorize the election or the continuance of any person as a member of the corporation if such election or continuance of membership shall be contrary to the by-laws, rules or regulations of the fire corporation.

(4) A person who has been convicted of arson in any degree shall not be eligible to be named in the certificate of incorporation of a fire corporation, or to be elected or appointed as a volunteer member of a fire corporation. The membership of any volunteer member of a fire corporation shall immediately terminate if he is convicted of arson in any degree while a member of a fire corporation.

(5) Upon application by any person for membership in a fire corporation operating pursuant to this section, the fire chief shall cause the applicant's background to be checked pursuant to section eight hundred thirty-seven-o of the executive law for a criminal history involving a conviction for arson.

✓(c) Incorporation of fire corporations in towns legalized.

Deleted: (d)

Any fire, hose, protective or hook and ladder corporation heretofore organized under any general law with the consent of the town board in the territory served by such corporation is hereby legalized and confirmed, notwithstanding the omission of any town board to appoint or confirm the members of such corporations as town firemen. Any such corporation shall hereafter be subject to the provisions of this section.

✓(d) Powers.

Deleted: (e)

(1) A fire, hose, protective or hook and ladder corporation heretofore incorporated under any general law or a fire corporation hereafter incorporated under this section shall be under the control of the city, village, fire district or town authorities having, by law, control over the prevention or extinguishment of fires therein. Such authorities may adopt rules and regulations for the government and control of such corporations. Notwithstanding the provisions of any such local law, a person who has been convicted of arson in any degree shall not be eligible for nomination, election or appointment to any office of the corporation, nor may such person serve as director of the corporation. Any fire corporation officer or director who is convicted of arson in any degree during his term of office shall be disqualified from completing such term of office.

(2) Where a fire corporation formed outside of a city, village or fire district furnishes fire protection to territory outside of the boundaries specified in its certificate of incorporation, the fire corporation and the members thereof shall be under the exclusive control of the town board of the town in which the fire corporation maintains its apparatus.

(3) The emergency relief squad of a fire corporation incorporated under this section or subject to the provisions thereof shall have power to furnish general ambulance service when duly authorized under the provisions of section two hundred nine-b of the general municipal law.

(4) Any fire company incorporated under this section or subject to the provisions thereof shall have power to engage in fund raising activities pursuant to section two hundred four-a of the general municipal law.

(5) Any fire company incorporated under this section or subject to the provisions thereof shall have power, subject to the approval or authorization of the town board, to attend a funeral.

|(e) Directors to file report.

Deleted: (f)

It shall be the duty of the directors of all fire, hose, protective or hook and ladder corporations incorporated under a general law or of a fire corporation formed under this section in territory outside of cities or villages, or a majority of them, on or before the fifteenth day of January in each year, to make and file in the county clerk's office, where the certificate of incorporation is filed a verified certificate, stating the names of the directors and officers of the corporation, containing an inventory of its property, a statement of its liabilities and that the corporation has not engaged, directly or indirectly, in any business other than that set forth in its certificate of incorporation.

|(f) Firemen's exemption.

Deleted: (g)

Every active fireman who shall be a member of a corporation subject to the provisions of this section shall be entitled to all the rights granted by law to volunteer firemen and every such active fireman who shall meet the requirements of section two hundred of the general municipal law shall be entitled to the additional rights granted by law to exempt volunteer firemen.

|(g) Legalization of membership of fire corporations in towns outside villages and fire districts.

Deleted: (h)

(1) Any person:

(A) who was recognized prior to the first day of July, nineteen hundred fifty-four, as a volunteer member of a fire corporation subject to the provisions of this section located in a town outside villages and fire districts by the town board or by the officers and members of the fire corporation, and

(B) who rendered active service with such fire corporation prior to such date, and

(C) who was, at the time of his election to membership, a resident of the territory specified in the certificate of incorporation or of territory outside such boundaries which was afforded fire protection by the fire corporation pursuant to a contract for fire protection,

shall for all purposes in law be considered to have been duly elected and confirmed as a member in such fire corporation as of the date of such confirmation, if any, and, if none, then as of the date of such election; notwithstanding that there may have been some legal defect in such election, or the proceedings precedent thereto, or a failure of the town board to confirm such member, as provided by the law in force at the time of such election, and the status of such person as a volunteer fireman as of the date of such confirmation or election is hereby legalized, validated and confirmed. This subparagraph shall not apply to a person, if any, whose volunteer membership in a fire corporation was declared invalid by a court of competent jurisdiction prior to the first day of January, nineteen hundred fifty-five.

(2) Any person:

(A) who was recognized on or after the first day of July, nineteen hundred fifty-four and prior to the first day of January, two thousand three as a volunteer member of a fire corporation subject to

the provisions of this section located in a town outside villages and fire districts by the town board or by the officers and members of the fire corporation, and

(B) who rendered active service with such fire corporation between such dates, and

(C) who was, at the time of his election to membership, a resident of the territory specified in the certificate of incorporation or of territory outside such boundaries which was afforded fire protection by the fire corporation pursuant to a contract for fire protection, or who was a nonresident elected to membership or who was continued as a member, pursuant to the provisions of subparagraph (A) shall for all purposes in law be considered to have been duly elected and confirmed, or continued, as a member in such fire corporation as of the date of such confirmation, if any, and, if none, then as of the date of such election or, in the case of a continuance, as of the date of approval, if any, by the town board and, if none, as of the date of authorization of continuance by the fire corporation; notwithstanding that there may have been some legal defect in such election, or the proceedings thereto, or a failure of the town board to confirm the election, or approve the continuance of membership, of such member, as provided by the law in force at the time of such election or continuance, and the status of such person as a volunteer fireman as of such date is hereby legalized, validated and confirmed. This subparagraph shall not apply to a person, if any, whose volunteer membership in a fire corporation was declared invalid by a court of competent jurisdiction prior to the first day of January, two thousand three.

✓(h) Discrimination because of race, color, creed or national origin prohibited.

Deleted: (i)

(1) It shall be an unlawful discriminatory practice for any volunteer fire department, fire company or fire corporation, through any member or members thereof, directors, officers, members of a town board, board of fire commissioners or other body or office having power of appointment of volunteer firemen in any fire department, fire company or fire corporation pursuant to this section, because of the race, creed, color, national origin, sex or marital status of any individual, to exclude or to expel from its volunteer membership such individual, or to discriminate against any of its members because of the race, creed, color, national origin, sex or marital status of such volunteer members.

(2) Any person claiming to be aggrieved by an unlawful discriminatory practice pursuant to this paragraph may by himself or his attorney at law make, sign and file with the state division of human rights, a verified complaint which shall set forth the particulars of the alleged unlawful discriminatory practice and contain such other information as the division of human rights may require. The division shall thereupon cause to be made an investigation and disposition of the charges pursuant to the provisions of article fifteen of the executive law.

*NY CLS N-PCL § 1403 (2006)*

#### § 1403. Corporations for the prevention of cruelty

(a) Prohibition of new corporations in certain counties.

(1) A corporation for the prevention of cruelty to animals shall not hereafter be incorporated for the purpose of conducting its operations in the counties of New York, Kings, Queens, Richmond, Rensselaer, or Westchester outside of the city of Yonkers; or in any other county if thereby two or more such corporations would exist in such county except as provided in subparagraph three hereof. Any corporation for the prevention of cruelty to animals may exercise its powers and conduct its

operations in any adjacent county in which no such corporation exists until the establishment of such a corporation therein.

(1-a) No corporation for the prevention of cruelty to children, or for the dual purpose of prevention of cruelty to children and cruelty to animals shall be incorporated on or after November first, nineteen hundred eighty-nine. Any such corporations, incorporated prior to November first, nineteen hundred eighty-nine, may exercise their powers and conduct their operation in any adjacent county in which no such corporations exist until the establishment of such corporations therein prior to November first, nineteen hundred eighty-nine. The Brooklyn society for the prevention of cruelty to children may exercise all its powers in the county of Nassau until a society for the prevention of cruelty to children shall be incorporated prior to November first, nineteen hundred eighty-nine, and located therein, and may exercise all its powers in the county of Suffolk until such a corporation is incorporated prior to November first, nineteen hundred eighty-nine, and located therein.

(2) In addition to the requirements of section 402, a certificate of incorporation under which an additional corporation is formed in the City of Yonkers must designate such city as the place where its operations are to be conducted.

(3) In any county having a population of one hundred thousand or less, where there is already in existence a corporation duly incorporated for the prevention of cruelty to animals and where it appears that the functions of such corporation are confined to a local area in such county and where it further appears that part of such county is not served by the existing corporation, an application may be made for the incorporation of a second such corporation in such county. If it appears to the satisfaction of the court that such existing corporation does not serve the area from which the application for incorporation of a new corporation is made, the court shall approve the proposed certificate of incorporation.

(b) Special powers.

(1) A corporation formed for the purpose of preventing cruelty to children, when represented by an attorney duly admitted to the practice of law, may prosecute a complaint before any court, tribunal or magistrate having jurisdiction, for the violation of any law enacted to prevent (i) the abuse, maltreatment or neglect of a child, as those terms are defined in section four hundred twelve of the social services law and section one thousand twelve of the family court act, or (ii) the exploitation of or harm to a child at the hands of an adult that would constitute a violation of article one hundred twenty, one hundred thirty, one hundred thirty-five, two hundred sixty or two hundred sixty-three of the penal law, and may aid in presenting the law and facts to such court, tribunal or magistrate in any proceeding therein.

(2) A corporation formed for the purpose of preventing cruelty to animals may prefer a complaint before any court, tribunal or magistrate having jurisdiction, for the violation of any law relating to or affecting the prevention of cruelty to animals, and may aid in presenting the law and facts to such court, tribunal or magistrate in any proceeding therein.

(3) A corporation for the prevention of cruelty to children may be appointed guardian of the person of a minor child during its minority by a court of record, or a judge thereof, and may receive and retain any child at its own expense on commitment by a court or magistrate.

(4) All magistrates, peace officers, acting pursuant to their special duties and police officers shall aid such a corporation, its officers, agents and members in the enforcement of laws enacted to

prevent (i) the abuse, maltreatment or neglect of a child, as those terms are defined in section four hundred twelve of the social services law and section one thousand twelve of the family court act, or (ii) the exploitation of or harm to a child at the hands of an adult that would constitute a violation of article one hundred twenty, one hundred thirty, one hundred thirty-five, two hundred sixty or two hundred sixty-three of the penal law, and for the prevention of cruelty to animals.

*NY CLS N-PCL § 1404 (2006)*

§ 1404. Christian associations

(a) Certificate of incorporation; additional contents.

In addition to the requirements of section 402, the certificate of incorporation of a Young Men's or a Young Women's Christian Association shall state the qualifications of active membership; and may name, in addition to the directors, six trustees and shall divide such trustees into three classes to hold office for one, two and three years respectively, or until their successors are elected by the board of directors.

(b)

Directors and trustees.

(1) The trustees of a corporation organized for the purposes of a young men's Christian association or a young women's Christian association, with the president of the corporation shall be a board of trustees thereof, and hold and control the real property of the corporation and all gifts and bequests of money to be held in trust. They or the directors if there is no board of trustees shall pay the income of such property to the treasurer of the corporation so long as the income shall be expended by the directors thereof for the purposes for which the corporation was formed. Such association may, by amendment to its certificate of incorporation, in the manner provided by law, eliminate its board of trustees, in which case the real property, gifts, bequests and other grants held in trust by such trustee shall be transferred to its board of directors which shall hold and control the real property of the corporation and all gifts and bequests of money to be held in trust.

(2) The real property of such corporation shall not be liable for any debt or obligation contracted without the approval of the board of trustees.

(3) In all proceedings for the purchase, sale, mortgage and lease of real property, the board of trustees of such a corporation shall perform the functions of the board of directors.

(4) The board of directors shall have the management and control of the property and affairs of the corporation, except as such management and control is vested by law in the board of trustees.

(5) A young men's Christian association incorporated prior to eighteen hundred and eighty-seven may create a board of trustees possessing the qualifications and divided into classes, and such board shall have the powers set forth in this paragraph.

(6) A young men's Christian association incorporated prior to nineteen hundred and eight may divide its trustees into classes.

**Deleted:** (c) Type of corporation.¶

¶  
A corporation for the prevention of cruelty is a Type B corporation under this chapter.¶

**Deleted:** Type of corporation.¶

¶  
A christian association is a Type B corporation under this chapter.

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|(c) Dissolution.

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Whenever any young men's Christian association subject to this section shall cease to carry out the objects set forth in its certificate of incorporation, according to the general rules and regulations of the national board of young men's Christian associations, or shall abandon or discontinue for one year the use of any of its property for such objects, then upon the verified petition of a majority of the directors of such association upon fourteen days' notice to the national board by service thereof upon its chairman and secretary or in the event of the failure of such directors to act, upon the verified petition of the national board of young men's Christian associations, upon fourteen days' notice to such association by service thereof upon its president or any director thereof, and upon one of the trustees thereof, and upon notice to the attorney general, the supreme court, upon satisfactory proof by affidavit or otherwise of such failure or abandonment, must make a final order dissolving such corporation. Upon the entry of such order, the corporation shall be dissolved, and thereupon the national board of young men's Christian associations may take possession of the property of the corporation and manage the same, or if authorized by the concurring vote of two-thirds of the members of the national board may sell or lease the same and apply the proceeds thereof after the payment of the debts, if any, of the corporation solely to such purposes as those for which the corporation was organized.

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|(d) Incorporation of county committees.

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(1) Five or more men resident in any county of this state, appointed by the national board of Young Men's Christian Associations, to act as the county committee of Young Men's Christian Associations for such county, may form a corporation under the provisions of this chapter under the name of "The County Committee of the Young Men's Christian Association of ----- County," (the blank space being filled by the name of the county in which the incorporators reside.)

(2) The management and control of the property and affairs of such corporation shall be vested in its members and their successors in office, except that the powers and duties of the trustees thereof shall be those specified in paragraph (a); and the successors of such members shall be elected annually at a meeting of the Young Men's Christian Associations of the county for which such committee has been appointed, at which meeting each association may be represented by one delegate for each ten active members of such association. A plurality vote of the delegates present, and voting at such meeting, shall be sufficient to elect. If any vacancy in the membership of such corporation shall occur during the interim between the regular elections, it may be filled by the remaining members.

(3) The officers of the corporation shall consist of a chairman, treasurer and secretary, and such other officers as the members may decide; and shall be elected annually by such members from their own number.

NY CLS N-PCL § 1405 (2006)

§ 1405. Soldiers' monument corporations

(a) Property; erection of monuments.



A corporation formed for the purpose of erecting and maintaining a monument or memorial, including a memorial hall or building to perpetuate the memory of persons who served in the armed forces of the United Colonies or of the United States in the Revolutionary War, the Civil War, or in any other war in which the United States has been engaged may acquire and hold real property necessary for its corporate purposes, and may erect any such monument, monuments or memorial upon any public street, square or ground of any town, city or village, with the consent of the proper officers thereof, or may purchase or accept the donation of land suitable for that purpose; and may take and hold the property given, devised or bequeathed to it in trust, to apply the same or the income or proceeds thereof for the erection, improvement, embellishment, preservation, repair, renewal, care and maintenance of such monument, monuments or memorial, or of any structure, fences or walks upon its lands, or for planting or cultivating trees, shrubs, flowers and plants, in and around or upon its lands, or for improving or embellishing the same in any manner consistent with the design and purposes of the association, according to the terms of such grant, devise or bequest. It may take by gift or purchase any lots or lands in any cemetery to be used and occupied exclusively for the burial of honorably discharged members of the armed forces who served in any of such wars, and for the erection of suitable monuments or memorials therein.

(b)

Deleted: Type of corporation.

A soldiers' monument corporation is a Type B corporation.

Town and village aid.

Deleted: (c)

The town clerk of a town or the board of trustees of a village, upon the petition of twenty-five resident taxpayers, shall submit to a biennial town meeting or village election, as the case may be, a proposition to raise by taxation a sum stated therein, not exceeding five hundred dollars in any one year, to be spent during the fiscal year for which such tax is to be levied, for the purpose of erecting such a monument, or contributing to the expense of such a monument, erected by a corporation specified in this article, or for repairing, improving and maintaining the same and the grounds thereof; and such tax shall be levied in the manner prescribed by law for levying general taxes in such town or village, and when raised shall be applied to the purposes specified in such proposition.

(c) Exemptions.

Deleted: (d)

The property of a corporation specified in this section or of a corporation formed under the laws of eighteen hundred and sixty-six, chapter two hundred and seventy-three, as amended by laws of eighteen hundred and eighty-eight, chapter two hundred and ninety-nine, shall be exempt from levy and sale on execution, and from all public taxes, rates and assessments, and no street, road, avenue or thoroughfare shall be laid through the lands of such association held for the purposes aforesaid without the consent of the trustees of such corporation, except by special permission of the legislature of the state.

(d) Improvement taxes.

Deleted: (e)

A tax may be levied and collected on the taxable property in a town, village or city in which such monument, monuments or other memorial may be erected, for the purpose of repairing or improving the same and the grounds thereof; and such tax shall be levied in the manner prescribed by law for levying general taxes in such town, village or city.

|(e) Transfer of property from unincorporated association.

Deleted: (f)

Any unincorporated association organized solely for one or more of the purposes set forth in paragraph (a) by a majority vote of all its members present at a meeting thereof, called as in this section provided, may transfer to and vest in any incorporated association created by general or special law having like objects any or all money or other property which it shall have accumulated for such objects, but the property so transferred shall be used exclusively for one or more of the purposes mentioned in such paragraph. A vote upon the question of transferring the funds or property of such unincorporated association shall be had only at a meeting of such association called for that purpose by the president or secretary or other managing officer thereof, upon notice stating the object of the meeting of at least ten days before the time fixed for such meeting, served personally or by mail on each member of the association within the United States whose residence or post office address is known.

*NY CLS N-PCL § 1406 (2006)*

§ 1406. Medical societies

(a) Medical societies heretofore formed.

Any medical society now existing in any of the counties of the state set apart prior to or since the passage of the act entitled "An act to incorporate medical societies for the purpose of regulating the practice of physic and surgery in this state," passed April tenth, eighteen hundred and thirteen, and not heretofore duly incorporated under the provisions of said act shall, upon complying with the provisions of this section enjoy the same privileges and possess the same powers as the societies incorporated by virtue of such act now enjoy and possess, but subject, nevertheless, to the provisions of any acts or parts of acts heretofore passed in relation to medical societies or to regulate the practice of physic and surgery in this state.

|(b) |

Deleted: Type of corporation.¶

¶  
A medical society is a Type A corporation under this chapter.

|Certificate of incorporation, additional contents.

Deleted: (c)

In addition to the requirements of section 402, the certificate of incorporation of a medical society shall state: (1) the name of such society; (2) the date of its organization; (3) the names and residences of its members; and (4) that such society, by a majority vote of its members, has elected to become and be a body corporate under and by virtue of the Act described in paragraph (a), and be subject to the provisions of any acts or parts of acts heretofore enacted and now in force, in relation to such societies or the practice of medicine or surgery in this state.

|(c) Regulations for county medical societies.

Deleted: (d)

It shall be lawful for any county medical society in this state, entitled to representation in the medical society of the state of New York, or in the homeopathic medical society of the state of New York, to establish such rules and regulations, not inconsistent with the laws of the state, for the government of its members as such county society may deem fit, provided such action receives the

sanction of the state medical society in which such county medical society is represented. Such county medical society may fix the amount of the annual dues and assessments to be collected from its members.

|(d) Enforcement of discipline; appeal.

Deleted: (e)

Every county medical society shall have full power and authority to enforce discipline among its members and obedience to its rules and regulations and to expel or otherwise discipline its members as it may deem for the best interests of the society. Any member of such a society who has been disciplined or an applicant for membership therein, who has been refused membership, feeling aggrieved at the action of the society, shall have the right to appeal to the medical society of the state of New York, in which such county medical society is represented.

|(e) Power to acquire property.

Deleted: (f)

It shall be lawful for any county medical society heretofore or hereafter incorporated and for the medical society of the state of New York and for the homeopathic medical society of the state of New York to acquire and hold for its corporate purposes real and personal property without limitation of amount or value, notwithstanding any limitation heretofore existing.

*NY CLS N-PCL § 1407 (2006)*

§ 1407. Alumni corporations

(a) Alumni may be incorporated.

The alumni of any college or university, or of one or more colleges or schools of any university, may be incorporated by executing and filing a certificate pursuant to article 4 of this chapter.

|(b) Powers.

Deleted: Type of corporation.¶  
¶  
An alumni corporation is a Type A corporation.¶  
¶  
(c)

An alumni corporation may create, manage and control a fund, to be known as the alumni fund, and for that purpose acquire and hold real and personal property. The principal of such fund, or the income derived therefrom, may be transferred to the college or university with which such corporation is identified, or used for and applied to such object or objects connected with such college or university as such alumni corporation shall direct.

|(c) Alumni fund.

Deleted: (d)

The directors of an alumni corporation shall have the custody and management of the alumni fund but shall not dispose of the whole or any part of the principal of any invested fund except as authorized by a two-thirds vote of the members of such corporation, present at an annual meeting thereof.

*NY CLS N-PCL § 1408 (2006)*

§ 1408. Historical societies

(a) Historical societies may hold property.

Any incorporated historical society of this state is hereby authorized to have and hold for the purposes of inclosure, preservation and the erection of monuments, but not for business purposes, the sites of old forts, battlegrounds and other historic sites, not exceeding six acres in any one locality, which shall be exempt from taxation; and to receive donations of articles of historic interest on the condition that in case of its dissolution or inability to pay its debts otherwise than from its effects, such articles shall revert to the donors or their heirs. Fees may be charged by any such society for the exhibition of its property or collections only to the extent that the proceeds thereof are used for the preservation, maintenance and development of such property or collections.

(b) Acquisition.

The acquisition by any such historical society of this state of any real property for the purpose of inclosure, preservation and the erection of monuments, is hereby declared to be for a public use. Such property may be acquired in the manner prescribed by the eminent domain procedure law.

**Deleted:** Type of corporation.¶

¶  
An historical society is a Type B corporation under this chapter.¶  
¶  
(c)

*NY CLS N-PCL § 1409 (2006)*

§ 1409. Agricultural and horticultural corporations

(a) Definition.

An agricultural or horticultural corporation or society is a corporation formed under or by a general or special law for promoting agriculture, horticulture and the mechanic arts.

(b) Condemnation.

In case any agricultural or horticultural corporation or any other agricultural society which has received moneys from the state for premiums paid for improving the breed of cattle, sheep and horses, or has acted as agent for the state in disbursing moneys for such purpose can not acquire real property needed for its corporate purposes upon satisfactory terms, it may acquire such real property by condemnation. Any real property acquired by condemnation, or otherwise, shall not be subject to condemnation by any other private corporation except a railroad corporation.

**Deleted:** Type of corporation.¶

¶  
An agricultural or horticultural corporation is a Type A corporation under this chapter, except that any such corporation which has received moneys from the state or has acted as agent for the state under paragraph (c), or has acquired or does acquire real property by condemnation is or becomes a Type B corporation under this chapter. If such corporation has not already filed as a Type B corporation it shall, upon such receipt of moneys or acting as such agent or such acquisition of real property by condemnation, amend its certificate to that effect.¶

¶  
(c)

**Deleted:** (d)

(c) Report of corporation receiving aid; disposition of property.

Any county agricultural corporation receiving after May tenth, nineteen hundred and twenty, money from any county shall, through its secretary, make annually to the board of supervisors a detailed statement with vouchers showing the disbursement during the year of all moneys so received. If such a corporation shall cease to exist, or without satisfactory reason shall fail or neglect to hold its annual exhibitions or fairs for a period of two years, the board of supervisors on notice to the corporation may petition the supreme court of the judicial district or the county court of the county to declare a forfeiture to the county of the real and personal property of the corporation in whole or in part or to confer on the county a lien upon such property, whereupon such court may make a decree

determining the legal or equitable rights of the county in such property subject to the rights of creditors of the corporation.

|(d) Restrictions on the formation of corporations.

Deleted: (e)

There shall be but one county corporation in a county, and but one town corporation in a town, except that a second corporation may be formed if it is to be the surviving corporation under a plan of merger with the existing corporation, in which event, the certificate of incorporation of such second corporation shall have endorsed thereon or annexed thereto the approval of a justice of the supreme court of the judicial district in which the office of such corporation is to be located. Ten days written notice of the application for such approval, accompanied by a copy of the proposed certificate, shall be given to the attorney general. Whenever a new county shall be or shall have been erected out of a part of an existing county in which a county corporation existed at the time of the erection of such new county, the existing corporation may at its option be continued as the county corporation of both counties. The determination of an existing corporation to be continued as a county corporation for both counties shall be evidenced by a certificate thereof, signed and acknowledged by a majority of the directors, and filed in the office of the secretary of state and in the office of the clerk of each of such counties. A town corporation may be formed for several towns, but the formation of such corporation shall not prevent the formation of a separate town corporation for any such town.

|(e) Annual fairs and premiums.

Deleted: (f)

Every agricultural or horticultural corporation, the American institute in the city of New York, and the New York state agricultural society, shall hold annual fairs and exhibitions, and distribute premiums. Such corporations and societies shall regulate and award premiums on such articles, productions and improvements as they deem best calculated to promote the agricultural, horticultural, mechanic and domestic arts of the state, having special reference to the net profits which accrue or are likely to accrue from the mode of raising crops, or stock, or fabricating the articles exhibited, so that the award be made to the most economical or profitable mode of production. A county or town corporation, by a two-thirds vote of the members present and voting at a regular meeting or at a special meeting, duly called for that purpose, may fix the place where the annual fair and exhibition of the corporation shall be held.

|(f) Police and magistrates on exhibition grounds.

Deleted: (g)

The board of directors of any agricultural or horticultural corporation, or the executive committee of such board, may appoint a chief of police and as many citizens of this state as may be necessary to act as policemen at their exhibitions. The chief of police may also while acting as such appoint such additional policemen as he may deem advisable. Such chief of police and policemen shall preserve order within and for a space of two hundred yards from and around the grounds of the corporation, protect the property within such grounds and space, and eject all persons improperly therein, or acting disorderly therein, or who neglect or refuse to pay the entrance fee or observe the rules prescribed by the corporation. Any of such officers may arrest without a warrant, any person who he has reasonable cause to believe has unlawfully and fraudulently entered the exhibition grounds of such corporation without paying the entrance fee therefor. Such officers shall have the same power in serving criminal process, making arrests and preserving the peace within such grounds and space,

during the time such exhibition continues, and for twenty-four hours thereafter, that a constable has by law. No town or county shall be liable to pay any such policeman for services rendered under this section. Such corporation may regulate or prevent all kinds of theatrical, or circus, exhibitions and shows, huckstering and traffic in fruits, goods, wares and merchandise, of whatever description, and shall prevent all kinds of mountebank exhibitions or shows for gain on the fair days on such fair grounds, and also within a distance of two hundred yards of the fair grounds of the corporation, if it shall determine that they obstruct or interfere with the free and uninterrupted use of the highways around and approaching such fair grounds.

A justice of the peace of the county in which such grounds are situated, while upon such grounds, may hold a court of special sessions, with the same jurisdiction over offenses committed upon such grounds and within two hundred yards of the boundaries thereof, as a court of special sessions of a town. The justice of the peace, before the close of the fair or exhibition at which the same are received, shall pay to such corporation, for its use, all fines and penalties received by him while holding such court, and shall make to the corporation a written report of his proceedings during such fair or exhibition. The report shall be in all respects the same as an annual account rendered for services in criminal proceedings by a justice of the peace of a town to the town board. The justice shall receive as compensation for his services under this section his legal fees to be paid by the corporation. The justice shall include in his annual report to the board a statement of the offenses committed and the proceedings had under this section, and the disposition made by him of fines and penalties collected. The justice shall enter in his regular criminal docket the full proceedings of all matters coming before him under this section, stating each case separately; and the record of such proceedings shall be kept open for public inspection upon the fair grounds during the fair or exhibition.

|(g) Capital stock.

Deleted: (h)

An agricultural or horticultural corporation may have capital stock aggregating not less than five thousand dollars, divided into shares of not less than ten dollars each, and may issue such certificates at not less than the par value thereof to raise money for its corporate purposes, if provision therefor is made in its certificate of incorporation or in a certificate filed pursuant to section 803 (Certificate of amendment; contents). An agricultural or horticultural corporation, which has issued or shall hereafter issue capital stock, entitling its shareholders to dividends from the profits of the corporation, shall be subject to the business corporation law and not to the provisions of this chapter in conflict therewith.

|(h) Annual report.

Deleted: (i)

On or before December fifteenth in each year, the directors of every agricultural or horticultural corporation shall make a verified report to the commissioner of agriculture and markets of the transactions of the corporation for the preceding twelve months giving full details of the receipts and expenditures thereof, with a list of premiums awarded and to whom and for what awarded.

|(i) Membership in state society.

Deleted: (j)

The presidents of the county agricultural corporations, or delegates to be chosen by such corporations annually, shall be ex officio members of the New York state agricultural society.

(i) Exhibitions and entertainments on fair grounds to be exempt from license.

Deleted: (k)

The provisions of any special or local law or municipal ordinance, requiring the payment of a license fee for exhibitions or entertainments, shall not apply to any exhibition or entertainment held on the grounds of a town or county corporation whether or not the corporation derives a pecuniary profit from such exhibition or entertainment by the lease of its grounds for such purpose.

*NY CLS N-PCL § 1410 (2006)*

§ 1410. Boards of trade and chambers of commerce

(a) Definitions.

(1) A board of trade is a corporation formed for the purpose of fostering trade and commerce, or the interests of those having a common trade, business, financial or professional interest, to reform abuses relative thereto, to secure freedom from unjust or unlawful exactions, to diffuse accurate and reliable information as to the standing of merchants and other matters, to procure uniformity and certainty in the customs and usages of trade and commerce, and of those having a common trade, business, financial or professional interest; to settle and adjust differences between its members and others and to promote a more enlarged and friendly intercourse among business people; to advance the civic, commercial, industrial and agricultural interests of the territory where the corporation is situate; to promote the general welfare and prosperity of such territory and to stimulate public sentiment to these ends; and to provide such civic, commercial, industrial, agricultural and social features as will promote these purposes.

(2) A chamber of commerce is a corporation, the members of which are in diverse lines of business, membership in which is not restricted to, nor in practice consists primarily of, persons, partnerships or corporations engaged in or carrying on the same, allied or interdependent lines of business, and which is formed for the purpose of fostering trade and commerce, or the interests of those carrying on such trade and commerce; to promote the general welfare and prosperity of the state, territory or community in which such corporation is situate; to reform abuses involving business, professional or financial interests, to secure freedom from unjust or unlawful exactions, to diffuse accurate and reliable information as to the standing of merchants and other matters, to procure uniformity and certainty in the customs and usages of trade and commerce; to settle and adjust differences between its members and others, and to promote a more enlarged and friendly intercourse among businessmen; to advance the civic, commercial, industrial and agricultural interests of the territory where the corporation is situate; to provide such features as will promote these purposes, and to stimulate public sentiment to these ends. A corporation formed before the first day of January, eighteen hundred seventy-five, the purposes and activities of which are those of a chamber of commerce as herein defined, shall be a chamber of commerce regardless of its name, and shall not be required to change its existing name by reason of this subparagraph.

(b) Special powers.

(1) A board of trade or a chamber of commerce organized for the purposes set forth in paragraph (a), shall have the power to be appointed and to act under the order or appointment of any court of

Deleted: Type of corporation.¶

¶  
A board of trade or a chamber of commerce is a Type A corporation under this chapter.¶

¶  
(c)



competent jurisdiction as receiver or trustee of the property or estate of any person or corporation in insolvency and bankruptcy proceedings, and to act as assignee or trustee for the benefit of creditors in any case in which a member or members of such board of trade or a chamber of commerce are creditors of such insolvent or bankrupt estate; or of such assignor for the benefit of creditors; or in any other instance where the purposes of the corporation might reasonably be involved.

(2) A board of trade or chamber of commerce organized for the purposes set forth in paragraph (a) may make loans to its members, directors or officers, or to any other corporation, firm, association or other entity in which one or more of its members, directors or officers are directors or officers or hold a financial interest, in any case where its board of directors finds that the making of such loan will be in furtherance of its corporate purposes and for a lawful public or quasi-public objective.

(3) A board of trade organized for the purposes set forth in paragraph (a) of this section may make distributions of cash or property to, or confer other benefits upon, its members, or former members, prior to dissolution or final liquidation in any case where the board of directors of such corporation finds that such cash, property or other benefit is not required for the conduct of its corporate purposes; provided, however, that no such action shall be taken when the corporation is currently insolvent or would thereby be made insolvent or rendered unable to carry on its corporate purposes, or when the fair value of the corporation's assets remaining after the taking of such action would be insufficient to meet its liabilities.

(4) A board of trade organized for the purposes set forth in paragraph (a) of this section may provide in its certificate of incorporation or by-laws that the members or any class of members shall, with respect to any matter on which the members of such class are entitled to vote, have more than, or less than, one vote.

*NY CLS N-PCL § 1411 (2006)*

§ 1411. Local development corporations

(a) Purposes.

This section shall provide an additional and alternate method of incorporation or reincorporation of non-profit corporations for any of the purposes set forth in this paragraph and shall not be deemed to alter, impair or diminish the purposes, rights, powers or privileges of any corporation heretofore or hereafter incorporated under this section or under the stock or business corporation laws. Corporations may be incorporated or reincorporated under this section as non-profit local development corporations operated for the exclusively charitable or public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, instructing or training individuals to improve or develop their capabilities for such jobs, carrying on scientific research for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area, and lessening the burdens of government and acting in the public interest, and any one or more counties, cities, towns or villages of the state, or any combination thereof, or the New York job development authority in exercising its power under the public authorities law to encourage the organization of local development corporations, may cause such corporations to be incorporated by public officers or private individuals or

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reincorporated upon compliance with the requirements of this section, and it is hereby found, determined and declared that in carrying out said purposes and in exercising the powers conferred by paragraph (b) such corporations will be performing an essential governmental function.

(b) Powers.

In furtherance of its purposes set forth in paragraph (a) but not for any other purposes, a local development corporation incorporated or reincorporated under this section shall have the following powers: to construct, acquire, rehabilitate and improve for use by others industrial or manufacturing plants in the territory in which its operations are principally to be conducted, to assist financially in such construction, acquisition, rehabilitation and improvement, to maintain such plants for others in such territory, to disseminate information and furnish advice, technical assistance and liaison with federal, state and local authorities with respect thereto, to acquire by purchase, lease, gift, bequest, devise or otherwise real or personal property or interests therein, to borrow money and to issue negotiable bonds, notes and other obligations therefor, and notwithstanding section 510 (Disposition of all or substantially all assets) without leave of the court, to sell, lease, mortgage or otherwise dispose of or encumber any such plants or any of its real or personal property or any interest therein upon such terms as it may determine and, in connection with loans from the New York job development authority, to enter into covenants and agreements and to comply with all the terms, conditions and provisions thereof, and otherwise to carry out its corporate purposes and to foster and encourage the location or expansion of industrial or manufacturing plants in the territory in which the operations of such corporation are principally to be conducted, provided, however, that no such corporation shall attempt to influence legislation by propaganda or otherwise, or participate or intervene, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office.

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¶  
A local development corporation is a Type C corporation under this chapter.¶  
¶  
(c)

(c) Purchase or lease of real property owned by a county, city, town or village.

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(1) The local legislative body of a county, city, town or village or, if there is a board of estimate in a city, then the board of estimate, may by resolution determine that specifically described real property owned by the county, city, town or village is not required for use by such county, city, town or village and authorize the county, city, town or village to sell or lease such real property to a local development corporation incorporated or reincorporated under this article; provided, however, that title to such land be not declared inalienable as a forest preserve or a parkland.

(2) Notwithstanding the provisions of any general, special or local law, charter or ordinance to the contrary, such sale or lease may be made without appraisal, public notice, (except as provided in subparagraph (4)) or public bidding for such price or rental and upon such terms as may be agreed upon between the county, city, town or village and said local development corporation; provided, however, that in case of a lease the term may not exceed ninety-nine years and provided, further, that in cities having a population of one million or more, no such sale or lease shall be made without the approval of a majority of the members of the borough improvement board of the borough in which such real property is located.

(3) Before any sale or lease to a local development corporation incorporated or reincorporated under this article shall be authorized, a public hearing shall be held by the local legislative body, or by the board of estimate, as the case may be, to consider the proposed sale or lease.

(4) Notice of such hearing shall be published at least ten days before the date set for the hearing in such publication and in such manner as may be designated by the local legislative body, or the board of estimate as the case may be.

(5) A local development corporation, incorporated or reincorporated under this section, which purchases or leases real property from a county, city, town or village, shall not, without the written approval of the county, city, town or village, use such real property for any purpose except the purposes set forth in the certificate of incorporation or reincorporation of said local development corporation. In the event such real property is used in violation of the restrictions of this paragraph, the attorney-general may bring an action or special proceeding to enjoin the unauthorized use.

|(d) Certificate of incorporation.

Deleted: (e)

In addition to the requirements of section 402 (Certificate of incorporation; contents) the certificate of incorporation or reincorporation of a local development corporation incorporated or reincorporated under this article shall state (1) that all income and earnings of such corporation shall be used exclusively for its corporate purposes or accrue and be paid to the New York job development authority, (2) that no part of the income or earnings of such corporation shall inure to the benefit or profit of, nor shall any distribution of its property or assets be made to any member or private person, corporate or individual, or any other private interest, except that the certificate of incorporation or reincorporation may authorize the repayment of loans and may also authorize the repayment of contributions (other than dues) to the local development corporation but only if and to the extent that any such contribution may not be allowable as a deduction in computing taxable income under the internal revenue code of nineteen hundred fifty-four, (3) that if such corporation accepts a mortgage loan or loans from the New York job development authority, such corporation shall be dissolved in accordance with the provisions of paragraph (g) upon the repayment or other discharge in full by such corporation of all such loans.

|(e) Exemption of income from taxation.

Deleted: (f)

The income and operations of corporations incorporated or reincorporated under this section shall be exempt from taxation.

|(f) Dissolution.

Deleted: (g)

Upon the dissolution of any local development corporation incorporated or reincorporated under this section no member or private person, corporate or individual, or other private interest, shall be entitled to any distribution or division of its remaining funds and other property and rights and interests in property, and the balance thereof, after the payment of all debts and liabilities of the corporation of whatsoever kind and nature, (including the payment of loans and contributions the repayment of which has been authorized in its certificate of incorporation or reincorporation) shall be distributed to one or more counties, cities, towns or villages within the territory designated in its certificate of incorporation or reincorporation as the territory in which its operations are principally to be conducted, for furtherance of the purposes set forth in paragraph (a), or to the New York job development authority, as shall be provided by said corporation or by order of the supreme court of the state of New York pursuant to section 1008 (Jurisdiction of supreme court to supervise dissolution and liquidation).

|(g) Corporations heretofore incorporated.

Deleted: (h)

Any corporation heretofore incorporated under the membership corporations law or this chapter, or under the stock or business corporation law for any of the purposes set forth in paragraph (a) of this section may amend its certificate of incorporation and be reincorporated as a local development corporation organized under this section by making and filing in the office of the secretary of state a certificate, stating the name of such corporation, and, if it has been changed, the name under which it was originally incorporated, the date of its incorporation, the names and post-office addresses of its members or of the holders of record of all of the outstanding shares of such corporation entitled to vote with relation to the proceedings provided for in the certificate and that such corporation has elected to become and be a local development corporation organized and operated under and by virtue of this section. Such certificate shall be either (1) subscribed in person or by proxy by all of the members or the holders of record of all of the outstanding shares of such corporation entitled to vote with relation to such proceedings and shall have annexed an affidavit of the secretary or an assistant secretary that the persons who have executed the certificate, in person or by proxy, constitute all of the members or the holders of record of all of the outstanding shares of the corporation entitled to vote with relation to the proceedings provided for in the certificate, or (2) subscribed by the president or a vice president and the secretary or an assistant secretary and shall have annexed an affidavit of such officers stating that they have been authorized to execute and file such certificate by the votes, cast in person or by proxy, of all of the members or of the holders of record of all of the outstanding shares of such corporation entitled to vote with relation to such proceedings at the meeting at which such votes were cast, and that such votes were cast at a meeting of members or stockholders held on a date specified, upon notice pursuant to section 605 (Notice of meeting of members) or to *section 605 of the Business Corporation Law*. Every certificate filed under this paragraph shall have endorsed thereon or annexed thereto the approval of a justice of the supreme court of the judicial district in which the office of the corporation is to be located. A reincorporation pursuant to this paragraph shall not effect a dissolution of the corporation, but shall be deemed a continuation of its corporate existence, without affecting its then existing property rights or liabilities, or the liabilities of its members or officers as such, but thereafter it shall have only such rights, powers and privileges, and be subject only to such other duties and liabilities, as a corporation created for the same purposes under this article.

|(h) Effect of section.

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Corporations incorporated or reincorporated under this section shall be organized and operated exclusively for the purposes set forth in paragraph (a), shall have, in addition to the powers otherwise conferred by law, the powers conferred by paragraph (c) and shall be subject to all the restrictions and limitations imposed by paragraph (e) and paragraph (g). In so far as the provisions of this section are inconsistent with the provisions of any other law, general or special, the provisions of this section shall be controlling as to corporations incorporated or reincorporated hereunder.

*NY CLS N-PCL § 1412 (2006)*

§ 1412. University faculty practice corporations

(a) Organization. Notwithstanding any other provision of law, one or more individuals who are duly authorized by law to render the same professional service, which shall be the practice of medicine, the practice of dentistry, the practice of chiropractics or the practice of optometry, and who are members of the faculty of the same accredited medical school, dental school, chiropractic college or optometry college, as applicable, in the state of New York may organize, or cause to be organized, a university faculty practice corporation under this article (1) for the purpose of supporting the educational mission of such school by providing clinical instruction and supervision of students of such school, interns and residents and, incident thereto, rendering professional services and (2) which shall be operated in compliance with (A) section 501(c)(3) of the United States internal revenue code and (B) the faculty practice plan with which members of the faculty of such school are required to comply, as amended from time to time.

(b) Definition. "University faculty practice corporation" means a corporation organized or reincorporated under this section.

(c) Certificate of incorporation. The certificate of incorporation of a university faculty practice corporation shall meet the requirements of this chapter and shall have attached thereto a certificate or certificates issued by the licensing authority certifying that each of the proposed members, if any, directors and officers is authorized by law to practice the profession which the corporation is being organized to practice. The certificate shall also state (1) the name of the medical school, dental school, chiropractic college or optometry college, as applicable, in the state of New York of which the proposed members, if any, directors and officers are faculty and (2) that such corporation shall operate in compliance with (A) section 501(c)(3) of the United States internal revenue code and (B) the faculty practice plan with which members of the faculty of such school are required to comply, as amended from time to time.

(d) Applicability of laws; members, directors and officers. This chapter shall be applicable to a university faculty practice corporation except to the extent that the provisions thereof conflict with this section. A university faculty practice corporation may consolidate or merge only with another university faculty practice corporation. The following provisions of article fifteen of the business corporation law shall be applicable to a university faculty practice corporation except that each reference in such provisions to a "shareholder" shall be deemed to be a reference to a "member" and each reference in such provisions to "shareholders" shall be deemed a reference to "members": paragraphs (a), (b), (c) and (e) of section fifteen hundred one; paragraphs (b), (c) and (d) of section fifteen hundred three; paragraphs (a), (c) and (g) of section fifteen hundred four; section fifteen hundred five; section fifteen hundred nine except to the extent such section refers to section fifteen hundred ten; paragraph (a) of section fifteen hundred twelve; section fifteen hundred fourteen; and section fifteen hundred fifteen. No individual may be a member, director or officer of a university faculty practice corporation unless such individual is authorized by law to practice in this state the profession which such corporation is authorized to practice and is a member of the faculty of the medical school, dental school, chiropractic college or optometry college which such corporation is organized to support.

**Deleted:** Type. A university faculty practice corporation is a Type B corporation under this chapter.¶  
¶  
(e)

(e) Corporations heretofore incorporated. Any corporation heretofore incorporated under article fifteen of the business corporation law and operated in compliance with the requirements of section 501(c)(3) of the United States internal revenue code may amend its certificate of incorporation and

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be reincorporated as a university faculty practice corporation organized under this section by making and filing in the office of the secretary of state a certificate entitled "Certificate of Reincorporation of . . . (name of incorporation) under *section 1412 of the Non-Profit Corporation Law*."

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(1) Such reincorporation certificate shall contain the provisions required, and any other provisions permitted, by section 402 of this chapter and shall also set forth (A) a statement that such corporation is filing such reincorporation certificate under this section, (B) if the name of such corporation has been changed, the name under which such corporation was originally incorporated, (C) the date of incorporation of such corporation, (D) the names and post-office addresses of the holders of record of all of the outstanding shares of such corporation entitled to vote, (E) a statement that such corporation has elected to become and be a university faculty practice corporation organized and operated under by virtue of this section and (F) the statements required by paragraph (c) of this section.

(2) Such reincorporation certificate shall be either (A) subscribed in person or by proxy by all of the holders of record of all of the outstanding shares of such corporation entitled to vote and shall have annexed an affidavit of the secretary or an assistant secretary that the persons who have executed the certificate, in person or by proxy, constitute all of the holders of record of all of the outstanding shares of the corporation entitled to vote or (B) subscribed by the president or a vice president and the secretary or an assistant secretary and shall have annexed an affidavit of such officers stating that they have been authorized to execute and file such reincorporation certificate by the votes, cast in person or by proxy, of all of the holders of record of all of the outstanding shares of such corporation entitled to vote at the meeting at which such votes were cast, and that such votes were cast at a meeting of shareholders held on a date specified, upon notice pursuant to section six hundred five of the business corporation law.

(3) A reincorporation pursuant to this paragraph shall not effect a dissolution of such corporation, but shall be deemed a continuation of its corporate existence, without affecting its then-existing property rights or liabilities, or the liabilities of its shareholders, directors or officers as such, but thereafter it shall have only such rights, powers and privileges, and it and such shareholders, directors and officers shall be subject only to such other duties and liabilities, as a university faculty practice corporation and members, directors and officers thereof.

(4) Upon the filing of a reincorporation certificate in the office of the secretary of state, (A) any issued and outstanding shares of such corporation shall be purchased by such corporation at a purchase price equal to the price for which such shares were originally issued, or such other price as such corporation shall agree to, such price to be paid out of the surplus of the corporation, whereupon such shares shall be deemed cancelled as of the date of such filing and (B) such reincorporation certificate shall be deemed to replace the certificate of incorporation of such corporation. The department of state shall not file such certificate of reincorporation unless the consent of the commissioner of taxation and finance is attached thereto. Such certificate of consent shall only be given if the commissioner of taxation and finance ascertains that all taxes imposed under article nine-A of the tax law, as well as penalties and interest charges related thereto, accrued against the corporation have been paid.

(f) Effect of section. University faculty practice corporations incorporated or reincorporated under this section shall be organized and operated exclusively for the purposes set forth in paragraph (a) of this section and shall be subject to the restrictions and limitations imposed by or pursuant to

Deleted: (g)

paragraphs (a) and (e) of this section. Notwithstanding anything to the contrary in article twenty-eight of the public health law or the regulations adopted pursuant thereto, no corporation organized under this section shall be deemed to be establishing or operating a hospital, diagnostic center and/or treatment center requiring establishment or construction approval solely by reason of being organized as a non-profit corporation. Insofar as the provisions of this section are inconsistent with the provisions of any other law, general or special, the provisions of this section shall be controlling as to the corporations incorporated or reincorporated hereunder.

Deleted: not-for-profit

*NY CLS N-PCL § 1501 (2006)*

§ 1501. Declaration of policy

The people of this state have a vital interest in the establishment, maintenance and preservation of public burial grounds and the proper operation of the corporations which own and manage the same. This article is determined an exercise of the police powers of this state to protect the well-being of our citizens, to promote the public welfare and to prevent cemeteries from falling into disrepair and dilapidation and becoming a burden upon the community, and in furtherance of the public policy of this state that cemeteries shall be conducted on a non-profit basis for the mutual benefit of plot owners therein.

*NY CLS N-PCL § 1502 (2006)*

§ 1502. Definitions

As used in this article:

(a) The term "cemetery corporation" means any corporation formed under a general or special law for the disposal or burial of deceased human beings, by cremation or in a grave, mausoleum, vault, columbarium or other receptacle but does not include a family cemetery corporation or a private cemetery corporation.

(b) The term "lot owner" or "owner of a lot" means any person having a lawful title to the use of a niche, crypt, lot, plot or part thereof, in a cemetery, mausoleum or columbarium.

(c) The term "cemetery board" means the cemetery board in the division of cemeteries in the department of state.

(d) A public mausoleum, crematory or columbarium shall be included within the term "cemetery".

(e) The sale of a lot, plot or part thereof, grave, niche or crypt shall mean the sale of the right of use thereof for burial purposes.

(f) The term "monuments" means a memorial erected in a cemetery on a lot, plot or part thereof, except private mausoleums.

(g) The term "interment" means the permanent disposition of human remains by inurnment, entombment or ground burial.

*NY CLS N-PCL § 1503 (2006)*



#### § 1503. Application

Except as otherwise provided in subdivision (c) of section fifteen hundred seven and subdivision (m) of section fifteen hundred ten this article does not apply to (1) a religious corporation, (2) a municipal corporation, (3) a cemetery corporation owning a cemetery operated, supervised or controlled by or in connection with a religious corporation or (4) a cemetery belonging to a religious or a municipal corporation, or operated, supervised or controlled by or in connection with a religious corporation unless any officer, member or employee of any such corporation shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof, other than reasonable compensation for services in effecting one or more of the purposes of such corporation or as proper beneficiaries of its strictly charitable purposes or unless the organization of any such corporation for any of its avowed purposes be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation, or for any of its officers, members or employees, and unless any such corporation is not, in good faith, organized or conducted exclusively for one or more of its stated purposes.

*NY CLS N-PCL § 1504 (2006)*

#### § 1504. Cemetery board and general administration

(a) A cemetery board is hereby created within the division of cemeteries in the department of state, subject to the following requirements: (1) The members of such board shall be the secretary of state, the attorney general and the commissioner of health, who shall serve without additional compensation. (2) The secretary of state, attorney general and commissioner of health may each, by official order filed in the office of his respective department and in the office of the board, designate a deputy or other representative in his department to perform any or all of the duties under this section of the department head making such designation, as may be provided in such order. Such designation shall be deemed temporary only and shall not affect the civil service or retirement rights of any person so designated. Such designees shall serve without additional compensation. (3) The secretary of state shall be chairman of such board, provided that in his absence at any meeting of the board the attorney general or the commissioner of health, in such order, if either or both be present, shall act as chairman. When designees of such officers, in the absence of all such officers, are present at any meeting of the board, the designee of the secretary of state, if present, and in his absence one of the other designees present, in the same order of preference as provided for the officer appointing him, shall act as chairman. (4) Technical, legal or other services shall be performed in so far as practicable by personnel of the departments of state, law and health without additional compensation but the board may employ and compensate within appropriations available therefor such assistants and employees as may be necessary to carry out the provisions of this section and may prescribe their powers and duties. (5) Two members of the board shall constitute a quorum to transact the business of the board at both regular and special meetings. (6) The board shall meet at least once a month, shall keep a record of all its proceedings and shall determine the rules of its own proceedings. (7) Special meetings may be called by the chairman upon his initiative, and must be called by him upon receipt of a written request therefor signed by another member of the board. Written notice of the time and place of such special meeting shall be delivered to the office of each member of the board. (8) The board shall have the duty of administering the provisions of this chapter which deal with cemetery corporations other than the cemeteries and cemetery corporations enumerated in

section fifteen hundred three and shall have all the powers herein provided and such other powers and duties as may be otherwise prescribed by law.

(b) Director of the division of cemeteries. The cemetery board shall appoint a director of the division of cemeteries who shall hold his office for a term of six years. He shall receive an annual salary to be fixed by the board within the appropriations available to the board. Subject to the supervision, direction and control of the board, the director of the division of cemeteries shall be responsible for the administration of this article and he shall exercise and perform such duties and functions of the board as it may assign or delegate to him from time to time.

(c) Powers and duties of the cemetery board. With respect to any cemetery or cemetery corporation, the cemetery board shall have the following duties and powers:

(1) To adopt such reasonable rules and regulations as the cemetery board shall deem necessary for the proper administration of this article.

(2) To order any cemetery corporation to do such acts as may be necessary to comply with the provisions of this article or any rule or regulation adopted by the cemetery board or to refrain from doing any act in violation thereof.

(2-a) To adopt reasonable rules and regulations to exempt those cemetery corporations from the provisions of paragraph (h) of section fifteen hundred ten of this chapter which because of a limited number of paid employees or appropriate resources are unable to carry out such provisions.

(2-b) To adopt reasonable rules and regulations to extend the time period mandated by the provisions of paragraph (h) of section fifteen hundred ten of this chapter when necessary because compliance by a cemetery corporation within such time period is impossible.

(3) To enforce its orders by mandamus or injunction in a summary proceeding or otherwise. In connection with such action or proceeding, the attorney general is authorized to take proof, issue subpoenas and administer oaths in the manner provided in the civil practice law and rules.

(4) To impose a civil penalty upon a cemetery corporation not exceeding one thousand dollars, after conducting an adjudicatory hearing pursuant to the provisions of the state administrative procedure act, for a violation of or a failure to comply with any provisions contained in this article or any regulation, directive or order of the board, and without the need to maintain a civil action pursuant to subdivision five of this paragraph.

(5) To maintain a civil action in the name of the people of the state to recover a judgment for a money penalty imposed under the provisions of this article.

(d) Judicial review. Any order or determination of the cemetery board made pursuant to this article shall be subject to review by the supreme court in the manner provided by article seventy-eight of the civil practice law and rules; provided, however, that an application for review of such order or determination must be made within one hundred twenty days from the date of the filing of such order or determination, and provided further that no stay shall be granted pending the determination of the matter except on notice to the cemetery board and for a period not exceeding thirty days. Proceedings to review such order shall be entitled to a preference.

*NY CLS N-PCL § 1505 (2006)*

§ 1505. Special requirements of incorporation

(a) Certificate of incorporation; additional contents. In addition to the requirements of section four hundred two (Certificate of incorporation; contents), the certificate of incorporation of a cemetery corporation shall be filed in the office of the clerk of each county in which any part of the cemetery is proposed to be, or is, situated, and shall state: (1) each city, village or town, and county, in which any part of the cemetery is or is proposed to be situated; and (2) the time of the annual meeting.

(b) Cemetery board endorsement. Every certificate of incorporation of a cemetery corporation, except those within the exclusionary provisions of section fifteen hundred three, shall have endorsed thereon or annexed thereto the approval of the cemetery board as required in subdivision (e) of section four hundred four of this chapter.

(c) Lot owners in unincorporated cemeteries may incorporate. (1) Not less than three owners of lots in an unincorporated cemetery may cause a notice to be posted in at least six conspicuous places in the city, town or village in which such cemetery is located, and to be published once in each week for three successive weeks in a newspaper, if any, published in such municipality, stating that at a time and place specified, a meeting of the lot owners will be held to determine whether such cemetery shall be incorporated, pursuant to this chapter. (2) The meeting shall be held at a convenient place in the city, town or village in which the cemetery is located, not less than twenty-five nor more than thirty days after the first posting and publication of the notice of the meeting. At such meeting every lot owner shall be entitled to one vote in person or by proxy for each lot owned by him. The persons entitled to vote at such meeting shall select a chairman and secretary, and determine by ballot whether or not the lot owners shall incorporate pursuant to this chapter. (3) If a majority of the ballots are in favor of incorporation, the persons entitled to vote at such meeting shall select three lot owners to incorporate and the provisions of this chapter shall be applicable, except that three persons may incorporate, and the corporation shall not be required to have more than three directors. Upon such incorporation, the lot owners shall be members of the corporation, and it shall be vested with the title to such cemetery and the personal property appertaining thereto. If the title to the cemetery has prior to such incorporation vested in the town, pursuant to section two hundred and ninety-one of the town law of section one of title seven of chapter eleven of part one of the revised statute, the supervisor of such town shall on request of the directors of such corporation, execute to it a deed of such cemetery lands releasing all interest of the town therein, and thereafter the title shall be vested in the corporation.

**Deleted:** Type of corporation. A cemetery corporation is a Type B corporation under this chapter.¶  
(d)

*NY CLS N-PCL § 1506 (2006)*

§ 1506. Cemetery lands

(a) Purchase of land; notice to board and court approval. No cemetery corporation, in purchasing real property hereafter, shall pay or agree to pay more than the fair and reasonable market value thereof. The terms of the purchase, including the price to be paid and the method of payment, shall be subject, upon notice to the cemetery board, to approval by the supreme court in a district where any portion of the land is located. In determining the fair and reasonable market value, the court may take into consideration the method by which the purchase price is to be paid.

(b) Consent of local authorities. (1) No cemetery shall hereafter be located in any city or village without the consent of the local legislative body of such city, or the board of trustees of such village. (2) No cemetery shall hereafter be located in any town, outside of an incorporated village in Suffolk county, without the consent of the town board of such town.

(c) Cemeteries in Kings, Queens, Rockland, Westchester, Nassau, Suffolk, Putnam and Erie counties. A cemetery corporation shall not take by deed, devise or otherwise any land in the counties of Kings, Queens, Rockland, Westchester, Nassau, Suffolk, Putnam or Erie for cemetery purposes, or set apart any ground therefor in any of such counties, unless the consent of the board of supervisors or legislative body thereof, or of the city council of the city of New York, in respect to Kings or Queens county, be first obtained. Such consent may be granted upon such conditions and under such regulations and restrictions as the public health and welfare may require. Notice of application for such consent shall be published, once a week for six weeks, in the newspapers designated to publish the session laws and in such other newspapers published in the county as such board or body may direct, stating the time when the application will be made, a brief description of the lands proposed to be acquired, their location and the area thereof. Any person interested therein may be heard on such presentation. If such consent is granted the corporation may take and hold the lands designated therein. The consent shall not authorize any one corporation to take or hold more than two hundred and fifty acres of land. Nothing contained in this subdivision shall prevent any religious corporation in existence on April fifteenth, eighteen hundred fifty-four, in any of said counties from using as heretofore any burial ground then belonging to it within such county. Such board or body, from time to time, may make such regulation as to burials in any cemetery in the county as the public health may require.

(d) Limitation on the acquisition of land by rural cemetery corporations. It shall not be lawful for any rural cemetery corporation hereafter to acquire or take by deed, devise or otherwise, any land in any county within the state of New York, having a population of between one hundred and seventy-five thousand and two hundred thousand, according to the federal census of nineteen hundred, or set apart any ground for cemetery purposes therein, where there has already been set apart in any such county, five hundred acres of land for rural cemetery purposes, and the consent of the board of supervisors of any such county shall not be granted where there has already been granted five hundred acres of land, or upwards, within such county, to rural cemetery corporations. But nothing herein contained shall affect any lawful consent or grant hitherto made by the board of supervisors of any such county.

(e) Limitations on the acquisition of land for cemetery purposes in certain counties. (1) It shall not be lawful for any corporation, association or person hereafter to set aside or use for cemetery purposes any lands in any county within the state erected on and after January first, eighteen hundred ninety, adjoining a city of the first class and having a population of between eighty thousand and eighty-five thousand according to the federal census of nineteen hundred ten; but nothing herein contained shall prevent cemetery corporations formed prior to January first, nineteen hundred seventeen, which own in such county a cemetery in which burials have been made prior to such date, from setting apart and using for burial purposes lands lying contiguous or adjacent to such cemetery which lands have been heretofore acquired by a recorded deed of conveyance made to such a cemetery corporation either for burial purposes, or for the purposes of the convenient transaction of its

general business, which lands shall have been acquired with the consent of the board of supervisors; nor to prohibit the dedication or use of land within such county for a family cemetery as provided in subdivision (c) of section fourteen hundred one of this chapter. (2) The provisions of this subdivision shall not operate to prevent any such cemetery corporation located in Nassau county from using for burial purposes contiguous or adjacent land acquired by it prior to January first, nineteen hundred forty-eight provided that such acquisition shall have consisted of less than five acres, and provided further that such use shall be consented to by the board of supervisors.

(f) Conveyance by religious corporations or by trustees. A cemetery corporation may accept a conveyance of real property held by a religious corporation for burial purposes, or by trustees for such purposes if all such trustees living and residing in this state unite in the conveyance, subject to all trusts, restrictions and conditions upon the title or use. Lots previously sold and grants for burial purposes shall not be affected by any such conveyance; nor shall any grave, monument or other erection, or any remains, be disturbed or removed without the consent of the lot owner, or if there be no such owner, without the consent of the heirs of the persons whose remains are buried in such grave.

(g) Certain conveyances to cemetery corporations authorized. Upon approval of the cemetery board first having been obtained, a cemetery corporation which maintains and operates a cemetery may accept a conveyance of title to the fee of or to burial rights in lands within the confines of said cemetery and it shall be lawful for any cemetery or business corporation to make such conveyances. Lots previously sold and grants previously made for burial purposes shall not be affected by such conveyance. The cemetery corporation, in consideration of the conveyance to it of burial rights in lands within the confines of said cemetery, may, with the approval of the cemetery board, issue participating certificates of the kind and nature provided for in paragraph three of subdivision (e) of section fifteen hundred eleven of this article. In making its determination the cemetery board shall consider and may condition its approval on the purposes of this section.

(h) Acquisition of property by condemnation. If the certificate of incorporation or by-laws of a cemetery corporation do not exclude any person, on equal terms with other persons, from the privilege of purchasing a lot or of burial in its cemetery, such corporation may, from time to time, acquire by condemnation, exclusively for the purposes of a cemetery, not more than two hundred acres of land in the aggregate, forming one continuous tract, wholly or partly within the county in which its certificate of incorporation is filed or recorded, except as in this section otherwise provided as to the counties of Erie, Nassau, Suffolk, Putnam, Kings, Queens, Rockland and Westchester. A cemetery corporation may acquire by condemnation, exclusively for the purposes of a cemetery, any real property or any interest therein necessary to supply water for the uses of such cemetery, and the right to lay, relay, repair and maintain conduits and water pipes with connections and fixtures, in, through or over the lands of others and the right to intercept and divert the flow of waters from the lands of riparian owners, and from persons owning or interested in any waters. But no such cemetery corporation shall have power to take or use water from any of the canals of this state, or any canal reservoirs as feeders, or any streams which have been taken by the state for the purpose of supplying the canals with water. A cemetery corporation may acquire, otherwise than by condemnation, real property as aforesaid and additional real property, not exceeding in value two hundred thousand dollars, for the purposes of the convenient transactions of its business, no portion of which shall be used for the purposes of a cemetery.

(i) Sale or disposition of cemetery lands. (1) No cemetery corporation may sell or dispose of the fee of all or any part of its lands dedicated to cemetery use, unless it shall prove to the satisfaction of the supreme court in the district where any portion of the cemetery lands is located, either: (A) that all bodies have been removed from each and every part of the cemetery, that all the lots in the entire cemetery have been reconveyed to the corporation and are not used for burial purposes, and that it has no debts and liabilities, or (B) that the land to be sold or disposed of is not used or is not physically adaptable for burial purposes and that the sale or disposition will benefit the cemetery corporation and the owners of plots and graves in the cemetery, and (C) that the sale or disposition is not to a funeral entity as defined in paragraph (c) of section fifteen hundred six-a of this article. (2) If the sale or disposition is made pursuant to subparagraph (A) of subdivision one of this paragraph, the cemetery shall satisfy the court that it is in the public interest to dispose of such cemetery land in the manner proposed; that the subject land is not suitable for cemetery purposes or is no longer needed by the community for such cemetery uses or purposes; and that the subject land is being sold for its current market value. (3) If the sale or disposition of the land is made pursuant to subparagraph (B) of subdivision one of this paragraph, the court shall order that the consideration received by the cemetery corporation, less the necessary expenses incurred, shall be deposited into the permanent maintenance fund established by the cemetery corporation pursuant to paragraph (a) of section fifteen hundred seven of this article. (4) Notice of any application hereunder shall be given to the cemetery board, to the holders of certificates of indebtedness and land shares of the cemetery corporation, and to any person interested in the proceeding pursuant to section five hundred eleven of this chapter (Petition for leave of court).

(j) Conveyance by cemetery corporation to city or village. A cemetery corporation may convey and transfer its real property held for burial purposes, together with its other assets, to a city having a population of less than one million inhabitants in which such real property is located, or to a village, provided such real property is located within such village or wholly within three miles of the boundaries thereof, or to a town, in which such real property is located, if all the directors and trustees of such cemetery corporation living and residing in the state of New York unite in the conveyance and transfer. Such conveyance and transfer shall be subject to all agreements as to lots sold and all trusts, restrictions and conditions upon the title or use of such real property and assets. Lots previously sold and grants previously made for burial purposes shall not be affected by such conveyance, nor shall any grave, monument or other erection be disturbed or removed except in accordance with law. No such conveyance shall be effective unless and until the legislative body of such city, town or village shall by ordinance or resolution accept the same subject to the conditions and restrictions hereinabove imposed, which ordinance or resolution said legislative body is hereby authorized and empowered to adopt by a majority vote of such body. Upon such conveyance and transfer such property shall be and become a municipal cemetery of such city, town or village and such property and assets so conveyed and transferred shall be administered as any other municipal cemetery of such city, town or village and the said cemetery corporation shall be dissolved by the recording of such conveyance and transfer.

(k) Streets or highways not to be laid out through certain cemetery lands. So long as the lands of a rural cemetery corporation organized under the act entitled "An act authorizing the incorporation of rural cemetery associations," constituting chapter one hundred thirty-three of the laws of eighteen hundred forty-seven, and the acts amendatory thereof, shall remain dedicated to the purpose of a

cemetery, no street, road, avenue or public thoroughfare shall be laid out through such cemetery, or any part of the lands held by such association for the purposes aforesaid, without the consent of the trustees of such association and the cemetery board.

(l) Exclusive right of cemetery corporation to provide annual care services. Notwithstanding any provision of this article to the contrary, it shall be the right of each cemetery corporation, at its option, to exclusively provide all annual care services to be performed for consideration on all or any part of its lands at rates to be reviewed by the cemetery board. In the event that the cemetery board determines that an excessive, unauthorized or improper charge has been made for such services or that the services have not been properly performed, he or she may direct the cemetery corporation to pay to the person from whom such charge was collected a sum equivalent to three times the excess as determined by the cemetery board, or in the case of work not properly performed, it may direct the cemetery corporation to perform the work properly. Every cemetery corporation that chooses to provide, on an exclusive basis, such annual care services shall include in any contract for the sale of any part of its lands the following notice, in at least ten point bold type:

#### Notice

The-- --(name of cemetery corporation), pursuant to state law, provides annual care services on an exclusive basis. Therefore, the purchaser of the plot or lot being transferred by this agreement may not contract with any outside party for such annual care services. For purposes of this paragraph, the term "annual care" shall mean the maintenance of a lot, plot or part thereof, and may include care of lawns, trees, shrubs, monuments and markers within the plot. The provisions of this paragraph shall not be construed to prohibit a lot owner from placing, or arranging to place, floral or similar arrangements on such cemetery lots or plots.

#### *NY CLS N-PCL § 1506-a (2006)*

#### § 1506-a. Cemetery corporations; restrictions

(a) No cemetery corporation shall, directly or indirectly:

(1) sell, or have, enter into or perform a lease of any of its real property to a funeral entity, or use any of its property for location of a funeral entity;

(2) commingle its funds with a funeral entity;

(3) direct or carry on its business or affairs with a funeral entity;

(4) authorize control of its business or affairs by a funeral entity;

(5) engage in any sale or cross-marketing of goods or services with a funeral entity;

(6) have or enter into or perform a management or service contract for cemetery operations with a funeral entity; or

(7) have, enter into or perform a management contract with any entity other than a non-profit cemetery corporation.

Deleted: not-for-profit



(b) Only the provisions of subdivisions one and two of paragraph (a) of this section shall apply to cemetery corporations with thirty acres or less of real property dedicated to cemetery purposes, and only to the extent the sale or lease is of real property dedicated to cemetery purposes, and such cemeteries shall not engage in the sale of funeral home goods or services, except if such goods and services are otherwise permitted to be sold by cemeteries, nor shall a majority of the members of the board of directors or trustees of such cemeteries be made up of the representatives of a funeral entity.

(c) For the purposes of this section, "funeral entity" means a person, partnership, corporation, limited liability company or other form of business organization providing funeral home services, or owning, controlling, conducting or affiliated with a funeral home, any subsidiary thereof or an officer, director or stockholder having a ten per centum or greater proprietary, beneficial, equitable or credit interest in a funeral home.

*NY CLS N-PCL § 1506-b (2006)*

§ 1506-b. Transfer of lands of Valley View Rural Cemetery

Notwithstanding any other provision of law to the contrary, the board of trustees of the Valley View Rural Cemetery Association in the town of Dover Plains, New York, may by resolution of such board, sell, lease or transfer any portion of the lands of Valley View Rural Cemetery to the parish of St. Charles Borromeo in the town of Dover Plains, New York, for cemetery purposes for the adjoining and contiguous cemetery of the parish of St. Charles Borromeo.

*NY CLS N-PCL § 1507 (2006)*

§ 1507. Trust funds

(a) Maintenance and preservation; permanent maintenance fund; current maintenance fund. Subject to rules and regulations of the cemetery board: (1) Every cemetery corporation shall maintain and preserve the cemetery, including all lots, plots and parts thereof. For the sole purpose of such maintenance and preservation, every cemetery corporation shall establish and maintain (A) a permanent maintenance fund, and (B) a current maintenance fund. At the time of making the sale of a lot, plot or part thereof, the cemetery corporation shall deposit not less than ten per centum of the gross proceeds of the sale into the permanent maintenance fund. An additional fifteen per centum of the gross proceeds of the sale shall be deposited in the current maintenance fund. In addition to the foregoing, at the time the cemetery corporation receives payment for the performance of an interment or inurnment, the cemetery corporation shall collect and deposit into the permanent maintenance fund the sum of thirty-five dollars. (2) The permanent maintenance fund is hereby declared to be and shall be held by the corporation as a trust fund, for the purpose of maintaining and preserving the cemetery, including all lots, crypts, niches, plots, and parts thereof. The principal of such fund shall be invested in such securities as are permitted for the investment of trust funds by *section 11-2.3 of the estates, powers and trusts law*. The income in the form of interest and ordinary dividends therefrom shall be used solely for the maintenance and preservation of the cemetery grounds.

In addition, the governing board of the corporation may appropriate for expenditure solely for the maintenance and preservation of the cemetery grounds a portion of the net appreciation, realized (with respect to all assets) and unrealized (with respect only to readily marketable assets), in the fair market value of the principal of the trust in excess of its adjusted historic dollar value, as defined in this subparagraph, as is prudent under the standard established by section seven hundred seventeen of this chapter (duty of directors and officers) and as limited by the maximum annual appropriation defined in this subparagraph. For the purposes of this subparagraph, the adjusted historic dollar value of the trust principal shall be the market value of the principal three full calendar years prior to the effective date of the amendments made to this subparagraph, plus all subsequent additions thereto, minus all allowable deductions therefrom, adjusted by the rate of inflation as measured by the applicable consumer price index. The maximum annual appropriation shall be sixty percent of the average of the net appreciation in the fund for the immediately preceding three years, but only to the extent that it exceeds the adjusted historical dollar value of the fund in the current year. Cemetery corporations shall keep complete records of the adjusted historic dollar value of the permanent maintenance fund. In the event that a cemetery corporation seeks to appropriate any percentage of its net appreciation in its permanent maintenance fund in accordance with this subparagraph, the cemetery corporation shall send a notice of such proposed appropriation by certified mail to the cemetery board, setting forth the amount of funds to be appropriated for such expenditure and its effect on the permanent maintenance fund, and certifying that such amount does not exceed the maximum annual appropriation defined in this subparagraph. Such proposed appropriation shall become effective sixty days after receipt of such notice, unless the cemetery board within such sixty-day period notifies the cemetery corporation that the board objects to the proposed appropriation. Notwithstanding the foregoing provisions of this subparagraph, all principal of the permanent maintenance fund shall remain inviolate, except that, upon application to the supreme court in a district where a portion of the cemetery grounds is located, the court may make an order permitting the principal or a part thereof to be used for the purpose of current maintenance and preservation of the cemetery or otherwise. Such application may be made by the cemetery board on notice to the corporation or by the corporation on notice to the cemetery board. Unless the cemetery can clearly demonstrate that it lacks sufficient future revenue to make repayment, any such allowance from the permanent maintenance fund shall be in the form of a loan, and the court shall determine the method for repayment of such a loan by the cemetery to the fund. Any loan from the permanent maintenance fund shall be ignored for the purpose of computing the adjusted dollar value of the fund. In the event that the court determines that an outright grant of principal from the permanent maintenance fund is necessary, the amount of such grant shall be deducted from the adjusted historic dollar value of the trust principal for the purposes of this subparagraph. (3) The current maintenance fund shall be used and applied for the sole purpose of ordinary and necessary expenses of the care and maintenance of the cemetery. When all burial rights in the cemetery have been conveyed, the fund remaining on deposit or to the credit of the current maintenance fund shall be transferred into the permanent maintenance fund. (4) The percentage of the proceeds of sales required to be deposited in the permanent maintenance fund or current maintenance fund by a particular cemetery corporation may be increased or diminished by order of the supreme court in a district where any portion of the cemetery is located. Such application may be made by the cemetery board on notice to the corporation or by the corporation on notice to the cemetery board.

(b) Perpetual care of lots. (1) Upon the application of a prospective purchaser of any lot, plot or part thereof and upon payment of the purchase price and the amount fixed as a reasonable charge for the

perpetual care of any lot, plot or part thereof, every cemetery corporation shall include with the deed of conveyance an agreement perpetually to care for such lot, plot, or part thereof, to the extent that the income derived by the corporation from such amount will permit. (2) Such corporation also, upon the application of an owner or of the executor or administrator of a deceased owner of any lot and upon the payment of the amount fixed as a reasonable charge for the perpetual care of such lot, shall, and upon the application of any other person and the payment of such amount, may enter into a like agreement with him. Such agreement shall be executed and may be recorded in the same manner as a deed. (3) Any corporation organized under or subject to the provisions of this section may enter into an agreement in writing with any executor or executors, trustee or trustees, under a last will and testament to whom there has heretofore been, or may hereafter be, bequeathed a sum for the perpetual care of any lot, plot or part thereof in any such cemetery or with any administrator or administrators with the will annexed under any such will perpetually to care for such lot, plot or part thereof under the provisions of the terms of such last will and testament, and subject in all cases to the approval of the surrogate's court having jurisdiction over such trust estate. Such approval may be evidenced by the written endorsement of the surrogate on a duplicate original of such agreement filed in the surrogate's court. In case the surrogate shall approve such agreement any such executor, trustee or administrator with the will annexed thereupon shall pay over to the treasurer of such perpetual care fund of such cemetery corporation any moneys remaining or being in his hands belonging to such trust, and upon making such payment and accounting therefore to the surrogate's court may be discharged from said trust as such executor, trustee or administrator with the will annexed.

(c) Perpetual care fund. (1) Every cemetery corporation and every religious corporation having charge and control of a cemetery which heretofore has been or which hereafter may be used for burials, shall keep separate and apart from its other funds, all moneys and property received by it, whether by contract, in trust or otherwise, for the perpetual care and maintenance of any lot, plot or part thereof in its cemetery, and all such moneys or property so received by any such corporation are hereby declared to be, and shall be held by the corporation as trust funds. Any moneys and property so received, unless otherwise provided in the instrument under which such moneys or property were received, shall be kept in a separate fund to be known as the perpetual care fund. (2) The principal of such funds, whether kept in the perpetual care fund or otherwise, and unless already so invested when received, shall be invested within a reasonable time after receipt thereof, and kept invested, in such securities as are permitted for the investment of trust funds by *sections 11-2.2 and 11-2.3 of the estates, powers and trusts law*. The income arising therefrom shall be used solely for the perpetual care and maintenance of the lot or plots or parts thereof for which such income has been provided. (3) The corporation may, for the purpose of investing and reinvesting such funds, add the same to any similar trust fund or funds and apportion shares or interest to each trust fund, showing upon its records at all times every share or interest. (4) The corporation may accept in trust for the perpetual care of a lot, plot or part thereof in its cemetery, property not made eligible for the investment of trust funds under the foregoing provisions of this subdivision and may retain such property in the form in which received, separate and apart from the perpetual care fund, if directed so to do by the instrument under which such property is received, so long as such property remains in the form in which it was received; but whenever such property is sold or otherwise disposed of, the proceeds of such sale or other disposition shall be invested in the manner heretofore provided in this subdivision for the investment of trust funds. The exchange of stock or evidences of indebtedness issued by a corporation for stock or evidences of indebtedness of the same corporation, or for stock, evidences of indebtedness, warrants or script received as a result of merger, con-

solidation or reorganization of such corporation, or the receipt of additional stock or evidences of indebtedness of such corporation, as a distribution by such corporation, shall not be deemed to be a disposition of the property originally received in trust, and such exchanged or additional property may be retained in place and stead of the property originally received, and under the same conditions. The corporation shall keep accurate accounts of all funds for the perpetual care and maintenance of cemetery lots, plots or parts thereof, separate and apart from its other funds. A copy of the record pertaining to each such perpetual care fund shall be at all times available at the office of the corporation during usual business hours, for inspection and copy by any owner of an endowed lot or his representative.

(d) Perpetual care fund; allocation of income and cost of care and maintenance. On or before the fifteenth day of March in each calendar year the officers of every cemetery corporation shall fix and determine that portion of the income on the investment of the principal of the perpetual care fund during the calendar or fiscal year immediately preceding, to be apportioned to each separate lot or part thereof for which a perpetual care agreement has been made. The cost during such previous calendar or fiscal year of the care of each lot or part thereof shall be allocated and charged against the income so apportioned to it. Any excess of the income so apportioned over and above the allocated cost of the care and maintenance of such lot or part thereof shall be credited to such lot or part thereof, to be used in any future years to make up the deficiency if the income apportioned to such lot or part thereof should, in any year since September first, nineteen hundred forty-nine, or in any future year, fall, or have fallen, below the cost of care thereof.

(e) Designation of fiduciary corporation by directors or trustees of cemetery corporation to act as custodians of funds. Notwithstanding the provisions of any other law, the directors or trustees of cemetery corporations are hereby authorized to designate a bank or trust company to act as custodian and trustee of any or all of the respective funds of such cemetery corporation received by it for the perpetual care of lots in the cemetery thereof pursuant to subdivision (b), of this section, the permanent maintenance of such cemetery pursuant to subdivision (a) of this section, and for special purposes pursuant to subdivision (f) of this section. Such corporate trustee shall be designated by a resolution duly adopted by the board of directors or trustees and approved by a justice of the supreme court of the judicial district in which the cemetery of said corporation is located; and the directors or trustees of such cemetery corporation may, with the approval of the justice of the supreme court, revoke such trust, and either take over such trust fund or name another trustee to handle the same, but if not so revoked, such trust shall be perpetual. Any bank or trust company accepting any such cemetery fund shall keep the same separate from all other funds, except that it may, irrespective of any provision contained in this article invest the same in a legal common trust fund or in shares of a mutual trust investment company organized under the banking law, and shall pay over the net income to the directors or trustees of the cemetery corporation by whom it shall be expended and applied to the purpose for which such trust fund was paid to the cemetery corporations and accounted for in accordance with such subdivisions (a), (b) and (f) of this section.

(e-1) Monument maintenance fund.

(1) A cemetery corporation may, subject to the approval of the cemetery board, establish and maintain a monument maintenance fund. Such a fund is hereby declared to be and shall be held by the cemetery corporation as a trust fund, for the purpose of providing notice if such monuments are

damaged or defaced by an act of vandalism and for the restoration of such monuments. Two or more cemetery corporations may establish a joint monument maintenance fund.

(2) The principal of the fund shall be invested in securities permitted for the investment of trust funds by *sections 11-2.2 and 11-2.3 of the estates, powers and trusts law*. The principal of such fund shall remain inviolate, except that upon application to the supreme court in a district where a portion of the cemetery grounds is located, the court may make an order permitting the principal or a part thereof to be used for the purpose of restoring monuments damaged or defaced by an act of vandalism. The income arising from such investment shall be used solely for the costs and expenses resulting from an act of vandalism against monuments in such cemetery.

(3) The fund shall be financed by a charge levied at the time of each interment at a rate established by each cemetery creating such a fund, subject to cemetery board approval pursuant to section fifteen hundred nine of this article. Such a charge shall be levied in addition to the approved rates for interment. The fund may also accept gifts, donations and bequests.

(4) Each cemetery creating such a fund shall promulgate rules and regulations to administer the fund, subject to cemetery board approval pursuant to section fifteen hundred nine of this article. Such rules shall include the conditions under which the income from such fund may be properly expended.

(5) The cemetery corporation shall keep accurate accounts of all moneys for the fund, separate and apart from its other funds.

(f) Acquisition of property for special purposes and in trust. (1) A cemetery corporation may acquire, otherwise than by condemnation, real or personal property, absolutely or in trust, in perpetuity or otherwise, and shall use the same or the income therefrom in pursuance of the terms of the instrument by which it was acquired, for the following purposes only: (i) The improvement or embellishment, but not the enlargement, of its cemetery; (ii) The construction, preservation or replacement of any building, structure, fence, wall, or walk therein; (iii) The erection, renewal or preservation of any tomb, monument, stone, fence, wall, railing or other erection or structure on or around its cemetery or any lot or plot therein; (iv) The planting or cultivation of trees, grass, shrubs, flowers or plants in or about its cemetery or any lot or plot therein; (v) The construction, operation, maintenance, repair and replacement of a crematory or columbarium or both in its cemetery; (vi) The care, keeping in order and embellishment of any lot, plot or part thereof or the structures thereon, in its cemetery, as prescribed in the instrument transferring such property to the cemetery corporation, or by the person or persons from time to time having possession, care and control of such lot, plot or part thereof, as the case may be. (2) All moneys and property received by a cemetery corporation in trust under this subdivision, unless otherwise provided in the instrument under which such moneys or property were received and unless already so invested when received, shall be invested within a reasonable time after the receipt thereof, and kept invested in such securities as are permitted for the investment of trust funds by *sections 11-2.2 and 11-2.3 of the estates, powers and trusts law*. The corporation may, for the purpose of investing and reinvesting such funds, add the same to any similar trust fund or funds and apportion shares or interests to each trust fund, showing upon its records at all times every share or interest. The cemetery corporation shall maintain a record for each such trust fund. Such record shall be at all times available at the office of the corporation during usual business hours, for inspection and copy by any owner of an endowed lot or his representative.

(g) Trust for the care of burial ground. A cemetery corporation, incorporated under or by a general or special law, may receive tangible property, securities or funds in trust, and hold and invest the same and apply the principal or income thereof, in accordance with the terms of the trust, for the purpose of repairing, maintaining, improving or embellishing a burial ground, not constituting a part of the cemetery of such cemetery corporation, and located outside of a city of more than one million inhabitants and within ten miles of the cemetery of the corporation accepting such trust. The directors of such corporation, or a majority of them and the treasurer, shall annually within sixty days after the close of each calendar or fiscal year, make, sign and shall file at the office of the corporation a detailed accounting and report of such trust funds held under this subdivision and the use made of such funds or of the income thereof for the preceding calendar or fiscal year, which shall include among other things, properly itemized, the securities in which the same is then invested, and any purchases, sales or other changes made therein during the period covered by such report. Such accounting and report shall be at all times available at the office of the corporation, during usual business hours, for inspection and copy by any lot owner or any contributor to such trust fund.

(h) Vandalism, abandonment and monument repair or removal.

(1) Cemeteries incorporated under this article shall contribute to a fund created pursuant to section ninety-seven-r of the state finance law for the maintenance of abandoned cemeteries, including the construction of cemetery fences, placement of cemetery lights and replacement of cemetery doors and locks, for the restoration of property damaged by acts of vandalism, and for the repair or removal of monuments or other markers not owned by the cemetery corporation that have fallen into disrepair or dilapidation so as to create a dangerous condition. Such fund shall be administered by a board of trustees comprised of the secretary of state, the attorney general and the commissioner of health, or their designees, who shall serve without additional compensation.

(2) The fund shall be financed by contributions by the cemetery corporations of not more than five dollars (\$ 5.00) per interment or cremation in a manner to be determined by the New York state cemetery board. No contributions shall be collected upon the interment of the remains of a deceased person where a contribution was collected upon cremations.

(3) The moneys of the fund shall be expended equally for the maintenance of abandoned cemeteries previously owned by a corporation incorporated pursuant to this chapter or the membership corporations law and the repair of cemetery vandalism damage and the repair or removal of monuments or other markers not owned by the cemetery corporation, provided, however, that the cemetery board may determine that circumstances necessitate an unequal distribution due to specific needs and may provide for such distribution. For purposes of this section, the maintenance of abandoned cemeteries may include the construction of cemetery fences, placement of cemetery lights and replacement of cemetery doors and locks.

(4) Authorization for payments by the fund for maintenance of an abandoned cemetery shall be made by the secretary of state only upon approval by the cemetery board of an application by a municipality for fair and reasonable expenses required to be made by the municipality for maintenance of an abandoned cemetery; provided, however, that the cemetery board shall not approve any such application unless the municipality acknowledges that the responsibility for restoration and future care, preservation and maintenance of such cemetery has been assumed by the municipality. For the purposes of this paragraph such cemetery shall always be deemed an abandoned cemetery.

(5) Authorization for payments by the fund for the repair of vandalism damage shall be made by the secretary of state only on approval by the New York state cemetery board which shall determine:

- (i) that an act of vandalism to the extent described by the cemetery corporation did take place;
- (ii) that either a written report of the vandalism was filed with the local police or sheriff's department, or, that the cemetery, upon consent of the division, made a determination not to file the report because the publicity generated by filing the report would have adverse consequences for the cemetery;
- (iii) that the cost of repairs is fair and reasonable; and
- (iv) that the cemetery corporation has been unable to obtain funds from the lot owner, his spouse, devisees or descendants within a reasonable period of time nor are there adequate funds in the cemetery corporations monument maintenance fund, if such a fund has been established by the cemetery.

(6) Authorization for payments by the fund for the repair or removal of monuments or other markers not owned by the cemetery corporation shall be made by the secretary of state only on approval by the New York state cemetery board on application by the cemetery corporation showing:

- (i) that the monuments or markers are so badly out of repair or dilapidated as to create a dangerous condition;
- (ii) that the cost of remedying the condition is fair and reasonable;
- (iii) that the cemetery corporation has given not less than sixty days notice to the last known owner to repair or remove the monument or other marker and the said owner has failed to do so within the time prescribed in said notice.

(7) The New York state cemetery board shall promulgate rules defining standards of maintenance, as well as what type of vandalism or out of repair or dilapidated monuments or other markers shall qualify for payment of repair or removal by the fund and the method and amount of payment of contributions described in subparagraph two of this paragraph upon the recommendation of the state cemetery board citizens advisory council created by section fifteen hundred seven-a of this article (State cemetery board citizens advisory council).

(8) Nothing contained in this paragraph is to be construed as giving a cemetery corporation an "insurable interest" in monuments or other embellishments on a plot, lot or part thereof, nor is it meant to imply that the cemetery corporation has any responsibility for repairing vandalism damage not covered by this fund, nor for repairing or removing out of repair or dilapidated monuments or other markers not owned by the cemetery corporation, nor shall it constitute the doing of an insurance business.

*NY CLS N-PCL § 1507-a (2006)*

§ 1507-a. State cemetery board citizens advisory council

(a) There is hereby created a state cemetery board citizens advisory council, to study, investigate, monitor and make recommendations with respect to the maintenance and operation of the state cemetery vandalism restoration, monument repair or removal and administration fund. Such advisory council shall study and investigate incidents of cemetery abandonment, vandalism and desecration, monitor the administration of such fund and recommend changes to improve the management



of and expenditures from the state cemetery vandalism restoration, monument repair or removal and administration fund.

(b) The advisory council shall be composed of a member designated by the secretary of state, a member designated by the attorney general, a member designated by the commissioner of health, a member designated by the comptroller and a member designated by the commissioner of taxation and finance. The appointees to the advisory council shall not be employees of the department of state, department of law, department of health, department of audit and control or department of taxation and finance. Each of the members shall serve for a term of two years, provided, however, that the first appointments by the comptroller and commissioner of taxation and finance shall serve for a term of one year. Vacancies occurring other than by expiration of term shall be filled in the same manner as the original appointments for the balance of the unexpired term. Persons designated or appointed to the advisory council shall have demonstrated a long-standing interest, knowledge and experience in the care and preservation of gravesites. One member shall be elected chairman of the advisory council by a majority vote of the members of such council.

(c) The members of the advisory council shall receive no compensation for their services but shall be reimbursed for travel expenses incurred in the performance of their duties.

(d) The advisory council shall meet at least quarterly at the call of the chairman.

(e) The advisory council may request and shall receive from any department, division, board, bureau, commission, agency, public authority of the state or any political subdivision thereof such assistance and data as will enable it properly to carry out its activities hereunder and effectuate the purposes set forth herein.

*NY CLS N-PCL § 1508 (2006)*

§ 1508. Reports by cemeteries

(a) Annual report. Each cemetery corporation shall, on or before the fifteenth day of March after the end of its calendar year, or if on a fiscal year the seventy-fifth day after the close of such year, file with the cemetery board (1) a statement as to the condition of the permanent maintenance trust fund and a schedule of the assets of such fund. (2) a statement as to the condition of the perpetual care fund and a schedule of the assets of such fund. (3) a statement as to the condition of the monies and properties received by the cemetery corporation in trust under the provisions of subdivisions (f) and (g) of section fifteen hundred seven of this article. (4) a statement of the gross proceeds of the sale of plots, lots and parts thereof, graves, niches and crypts showing the disposition of such proceeds and (5) a statement of changes in the number and amount of certificates of indebtedness in accordance with the provisions of paragraph three of subdivision (a) of section fifteen hundred eleven of this article. (6) a statement as to the condition of the monument maintenance fund, if any, and a schedule of the assets of such fund.

(b) Additional reports. The cemetery board may address to any cemetery corporations or its officers or any person any inquiry in relation to the transactions or conditions of the cemetery corporation or

any matter connected therewith, and may require that a reply be verified. Failure to submit such reply within the time designated by the cemetery board shall subject the corporation, officer or person so addressed to the penalties provided in subdivision (d) hereof.

(c) Cemetery payment for administration. To defray the expenses of examination and administration, each cemetery corporation shall not later than March fifteenth in each calendar year, pay to the cemetery board the sum of three dollars per interment in excess of fifteen interments for the preceding calendar year.

(d) Failure to file report. Any cemetery corporation or individual failing to file any report or any schedule of rules, regulations and charges required by this article shall forfeit to the people of the state the sum of one hundred dollars for each day that each such report shall be delayed or withheld, except that the cemetery board may extend the time for filing any such report and may waive payment of any penalty or part thereof provided herein.

*NY CLS N-PCL § 1509 (2006)*

§ 1509. Cemetery rules and regulations; charges and lot tax assessments

(a) Rules and regulations. The directors of a cemetery corporation shall make reasonable rules and regulations for the use, care, management and protection of the property of the corporation and of all lots, plots and parts thereof; for regulating the dividing marks between the lots, plots and parts thereof; for prohibiting or regulating the erection of structures upon such lots, plots or parts thereof; for preventing unsightly monuments, effigies and structures within the cemetery grounds, and for the removal thereof; for regulating the introduction and care of plants, trees and shrubs within such grounds; for the prevention of the burial in a lot, plot or part thereof, of a body not entitled to burial therein; for regulating or preventing disinterments; for regulating the conduct of persons while within the cemetery grounds; for excluding improper persons and preventing improper assemblages therein. The directors may prescribe penalties for the violation of any such rule or regulation, not exceeding twenty-five dollars for each violation, which shall be recoverable by the corporation in a civil action.

(b) Charges for services. The directors of a cemetery corporation shall fix and make reasonable charges for any acts and services ordered by the owner and rendered by the corporation in connection with the use, care, including perpetual, annual and special care, management and protection of lots, plots and parts thereof. In determining said charges the directors shall consider the propriety and the fair and reasonable cost and expense of rendering the services or performing the work for which such charges are made.

(c) Cemetery board approval. (1) A cemetery corporation's rules, regulations and original charges shall not become effective unless and until approved by the cemetery board as hereinafter provided. (2) The directors of any cemetery corporation, organized on or before August thirty-first, nineteen hundred forty-nine, shall file in the office of the cemetery board the name and address of the corporation together with its rules, regulations and charges, and a statement showing the basis upon which they were made, within ninety days after the time this section as hereby amended takes ef-

fect. The directors of any cemetery corporation organized on or after September first, nineteen hundred forty-nine, shall file in the office of the cemetery board the name and address of the corporation together with its rules, regulations and charges, and a statement showing the basis on which they were made, within ninety days after the date of the filing of the certificate of incorporation in the department of state. (3) Within six months after the date of such filing, the cemetery board shall make and file in its office an order approving, disapproving or amending such rules, regulations and original charges in whole or part. Such rules, regulations and charges, if approved with or without amendment, shall become effective as approved upon the filing of such order by the cemetery board in its office. The cemetery board shall notify the directors of the action taken by it and its reasons therefor by registered mail addressed to the corporation at its principal office. In making its determination as to the schedule of charges the cemetery board shall consider the propriety and the fair and reasonable cost and expense of rendering the services or performing the work for which such charges are made. In passing upon the rules and regulations, the cemetery board shall consider the interests of the members of the corporation and the public interest in the proper maintenance and operation of burial grounds. (4) The rules, regulations and charges of any cemetery corporation existing on or before August thirty-first, nineteen hundred forty-nine, shall remain in effect until the cemetery board files in its office an order pursuant to the provisions of subdivision three hereof. A cemetery corporation organized on or after September first, nineteen hundred forty-nine, may enforce the rules, regulations and charges filed by it in the office of the cemetery board until the cemetery board files in its office an order pursuant to the provisions of subdivision three hereof.

(d) Services not in list of charges. In the event that a cemetery corporation provides any services not included in the list of charges, and for which a charge cannot reasonably be fixed in advance, the charges made therefor shall be reviewable by the cemetery board. In the event that the cemetery board determines that an excessive, unauthorized or improper charge has been made for such services or that the services have not been properly performed, it may direct the cemetery corporation to pay to the person from whom such charge was collected a sum equivalent to three times the amount of the excess as determined by the cemetery board, or in the case of work not properly performed, it may direct the cemetery corporation to perform the work properly.

(e) Amendment and modification. (1) The rules and regulations of a cemetery corporation may be amended or added to by the corporation by filing such proposed amendments or additions in the office of the cemetery board but no such amendment or addition shall be effective unless and until an order approving such amendments or additions is made by the cemetery board and filed in its office in the same manner as that applicable to the original filing of the rules, regulations and charges of the cemetery corporation. (2) The charges of a cemetery corporation may be amended or added to by the corporation by filing an application containing such proposed amendment or addition in the office of the division of cemeteries and shall be processed in accordance with subdivision three of this paragraph. The cemetery board shall consider the propriety and the fair and reasonable costs and expense of rendering the services or performing the work for which such charges are made. The effective rules, regulations or charges of a cemetery corporation may be amended, modified or vacated by the cemetery board at any time. The cemetery board shall notify the directors of the action taken by it and its reasons therefor by registered or certified mail addressed to the corporation at its principal office. In amending, modifying or vacating any rule, regulation or charge, the cemetery board shall be guided by the standards set forth in subdivision three of paragraph (c) of this section. (3) Any application setting forth the proposed amendment of, or addition to, the charges of a ceme-

tery corporation as provided for by subdivision two of this paragraph shall be processed in accordance with the following schedule:

A. Within thirty-five days following receipt of the application, the board or the division may request from the cemetery corporation any additional information or documentation deemed necessary to complete such application, and such application shall not be complete for the purposes of compliance with this subdivision until the requested information has been received. If no such request is made, the application shall be deemed to be complete on the thirty-fifth day after its receipt by the division.

B. An application setting forth the proposed amendment of, or addition to, the charges of a cemetery corporation shall be deemed to be approved for any cemetery corporation holding, including unrestricted funds, cash and investments totalling less than four hundred thousand dollars, if the board does not object to the proposed charges within sixty days following: (i) the date on which the application shall have been deemed to be complete or (ii) the date on which the requested information necessary to complete the application shall have been received, whichever is later. If the board objects to the proposed charges, it shall notify the directors in writing with the reasons therefor, such notice to be mailed by registered or certified mail to the corporation at its principal office, not less than three business days before the end of such sixty day period. If the board approves such amendment of or addition to the charges, it shall do so by order.

C. An application setting forth the proposed amendment of, or addition to, the charges of a cemetery corporation shall be deemed to be approved for any cemetery corporation holding, including unrestricted funds, cash and investments totalling more than four hundred thousand dollars, if the board does not object to the proposed charges within ninety days following: (i) the date on which the application shall have been deemed to be complete or (ii) the date on which the requested information necessary to complete the application shall have been received, whichever is later. If the board objects to the proposed charges, it shall notify the directors in writing with the reasons therefor, such notice to be mailed by registered or certified mail to the corporation at its principal office, not less than three business days before the end of such ninety day period. If the board approves such amendment of or addition to the charges, it shall do so by order.

(f) Lot tax assessment. (1) If the funds of a cemetery corporation applicable to the improvement and care of its cemetery, or applicable to the construction of a receiving vault therein for the common use of lot owners, be insufficient for such purposes, the directors of the corporation, not oftener than once in any year and for such purposes only, may, upon the prior approval of the cemetery board, which shall determine the necessity and propriety thereof, levy a tax on some basis to be determined by the directors of such corporation, but no such tax shall exceed two dollars on any one lot, except that with the written consent of two-thirds of the lot owners or by the vote of a majority of the lot owners present at an annual meeting, or at a special meeting duly called for such purpose, such tax may be for an amount which shall not exceed a total of five dollars per annum per lot, and the tax on any one lot shall not exceed five dollars per annum but the taxes may be levied upon each lot in the first instance for a sum sufficient for the improvement and care of the lot, but no greater sum than five dollars shall be collected in any one year. The whole tax levied may be collected in sums of five dollars in successive years in the manner herein provided. (2) Notice of such tax shall be served on the lot owners or where two or more persons are owners of the same lot, on one of them, either personally, or by leaving it at his residence, with a person of mature age and discretion, or by mail, if he resides in a city, town or village where the office of the corporation is not located, or in

case the residence or whereabouts of the owner cannot be ascertained, by publication once a week for four successive weeks in a newspaper published in the town where such cemetery is located, or if no newspaper is published in such town then in some newspaper published in the county where such cemetery is located. (3) If such tax remain unpaid for more than thirty days after the service of such notice, the president and secretary of the corporation may issue a warrant to the treasurer of the corporation, requiring him to collect such tax in the same manner as school collectors are required to collect school taxes; and such treasurer shall have the same power and be subject to the same liabilities in executing such warrant as a collector of school taxes has or is subject to by law in executing a warrant for the collection of school taxes. (4) If the taxes so levied remain unpaid for five years after the levying of such tax the amount thereof with interest shall be a lien on the unused portion of the lot which is subject to such tax, and no portion of the lot so taxed shall be used by the owner thereof for burial purposes, while any such tax remains unpaid. (5) If at the expiration of five years from the date of the service of the first notice of assessment as herein provided, any such assessment or the interest thereon shall remain unpaid, the corporation may sell the unused portion of such lot at public auction upon the cemetery grounds, in the following manner: If the person owning such lot resides within the state, a written notice, under the seal of such cemetery corporation, if it have a seal, and the hand of the president or secretary thereof, stating the amount of such tax or taxes unpaid and that such unused portion of such lot will be sold at a time therein to be specified, not less than twenty days from the date of the service of such notice, shall be personally served upon such owner; if such owner is not a resident of the state, or if the place of his residence cannot with due diligence be ascertained, or if, for any other reason satisfactory to the court, personal service cannot with due diligence be made upon such owner, such cemetery corporation, or any of its officers, may present a duly verified petition stating the facts to the county court of the county in which such cemetery lands are situated, or to the supreme court, and such court may upon satisfactory proof, by its order, direct the service of such notice in the manner provided by the civil practice law and rules for the substituted service of a summons. The president or secretary of such corporation, or any suitable and proper person appointed by it or by the court, upon filing proof of publication and service of such notice as provided by section three hundred fourteen of the surrogate's court procedure act may make such sale, and such sale may be adjourned from time to time for the accommodation of the parties or for other proper reasons. Previous notice of such sale shall be posted at the main entrance of the cemetery. Prior to such sale such corporation shall cause such lot to be resurveyed and replotted showing the part thereof not used for burial purposes and only such unused portion shall be sold. The cemetery corporation may at any such sale purchase any such lots or parts of lots. The surplus remaining after paying all assessments, interest, cost and charges shall be set aside by the corporation, as a fund for the care and improvement of the portion of such lot that has been used for burial purposes. In case the proceeds of such sale shall amount to more than thirty dollars the person making it shall make his report, under oath, to the court, of the proceedings and shall state the amount for which such lot was sold and that it was sold to the highest responsible bidder, together with the names of the purchasers, and the court may and in a proper case shall, by order, confirm the sale; in all other cases the person making such sale shall file in the office of the county clerk of the county in which the cemetery lands are situated a like report duly verified; on the filing of such order of confirmation or such report, as the case may be, the ownership of the unoccupied portion of such lot shall vest in the purchaser thereof. (6) The directors of any such corporation may make a contract with a lot owner which shall provide for the payment by him of an agreed gross sum in lieu of further taxes and assessments and that upon the payment of such gross sum the lot of such owner shall be thereafter exempt from taxes and assessments.

(g) Purchases through office of general services. Notwithstanding the provisions of any general, special or local law, any officer or agent of a cemetery corporation subject to the provisions of this article authorized to make purchases of materials, equipment or supplies may make such purchases, except of printed material, through the office of general services subject to such rules as may be established from time to time pursuant to section one hundred sixty-three of the state finance law; provided that any such purchase shall exceed five hundred dollars and that the cemetery corporation for which such officer or agent acts shall accept sole responsibility for any payment due the vendor. All purchases shall be subject to audit and inspection by the cemetery corporation for which made. Two or more cemetery corporations may join in making purchases pursuant to this section and, for the purposes of this section, such groups shall be deemed a cemetery corporation.

*NY CLS N-PCL § 1510 (2006)*

§ 1510. Cemetery duties

(a) Posting of rules, regulations, charges and prices. The rules, regulations, charges, and prices of lots, plots or parts thereof shall be suitably printed and shall be conspicuously posted by the corporation in each of its offices. For each day in which the corporation fails to post the rules, regulations, charges and prices the corporation shall be subject to a penalty of twenty-five dollars which may be recovered in a civil action by the cemetery board. The cemetery board may waive the payment of the penalty or any part thereof.

(b) Surveys and maps of cemetery. (1) Every cemetery corporation, from time to time, as land in its cemetery may be required for burial purposes, shall survey and subdivide such lands and make and file in the office of the corporation a map thereof, open to public inspection, delineating the lots or plots, avenues, paths, alleys and walks and their respective designations; a true copy thereof shall upon its written request, be filed with the cemetery board. Any unsold lots, plots or parts thereof, in which there are no remains, by order of the directors, may be resurveyed and altered in shape or size, and properly designated on such map. (2) Every cemetery corporation shall provide reasonable access to every lot, plot and grave. This provision shall not be applicable where on September first, nineteen hundred forty-nine such access cannot be provided without the disinterment of a body or bodies. A cemetery corporation shall not permit or allow a body to be interred hereafter in a path, alley, avenue or walk shown on the cemetery maps or actually in existence. Nothing herein contained, however, shall prevent a cemetery corporation in special cases from enlarging a lot by selling to the owner thereof the access space next to such lot, and permitting interments therein, provided reasonable access to such lot and to adjoining lots is not thereby eliminated, and provided the approval of the cemetery board shall have first been obtained.

(c) Record of burials. A record shall be kept of every burial in the cemetery of a cemetery corporation, showing the date of burial, the name, age and place of birth of the person buried, when these particulars can be conveniently obtained, and the lot, plot, or part thereof, in which such burial was made. A copy of such record, duly certified by the secretary of such corporation, shall be furnished

on demand and payment of such fees therefor as are allowed the county clerk for certified copies of records.

(d) When burial not to be refused. No cemetery corporation shall refuse or deny the right of burial and the privileges incidental thereto in any lot, plot or part thereof to those otherwise lawfully entitled to be buried therein, for any reason except for the non-payment of interment charges and the purchase price of the lot, plot or part thereof, in accordance with the terms of the contract of purchase or except as provided in subdivision (f) of section fifteen hundred nine of this article.

(e) Removals. A body interred in a lot in a cemetery owned or operated by a corporation incorporated by or under a general or special law may be removed therefrom, with the consent of the corporation, and the written consent of the owners of the lot, and of the surviving wife, husband, children, if of full age, and parents of the deceased. If the consent of any such person or of the corporation can not be obtained, permission by the county court of the county, or by the supreme court in the district, where the cemetery is situated, shall be sufficient. Notice of application for such permission must be given, at least eight days prior thereto, personally, or, at least sixteen days prior thereto, by mail, to the corporation or to the persons not consenting, and to every other person or corporation on whom service of notice may be required by the court.

(f) Expenses of improving vacant lot. Whenever a person having a lot in a cemetery shall vacate the same by a removal of all the bodies therefrom, and leave such lot in an unsightly condition for one month, the corporation may grade, cut, fill or otherwise change the surface thereof, without reducing the area of the lot. The expense, not exceeding ten dollars, shall be chargeable to the lot. If the owners of such lot, within six months after such expense has been incurred, shall not repay such expense, the corporation may sell the lot at public auction upon the cemetery grounds, previous notice of such sale having been posted at the main entrance of the cemetery, and mailed to the owners of such lot at their last-known post office address, at least ten days prior to the day of sale, and shall pay the surplus, if any, on demand to the owners of such lot.

(g) Removal or correction of dangerous conditions in cemetery lots. Any plant life, fencing or embellishment or structure other than a mausoleum, monument or mound, in a lot, plot or part thereof which becomes so worn, neglected, broken or deteriorated that its continued existence is a danger to persons or property within the cemetery grounds may be removed, repaired or corrected by the cemetery corporation at its own cost and expense, provided it first gives not less than fifteen days notice by registered or certified mail to the last known owner at his last known address to repair or remove such object and the said owner shall fail to repair or remove the object within the time provided in said notice. In the event of such removal, correction or repair by the cemetery corporation it shall, within twenty days thereafter, notify the lot owner, by registered or certified mail addressed to him at his last known address, of the action taken by the cemetery corporation. Nothing herein contained shall be construed to affect, supersede or impair any contract, rule or regulation duly approved by the cemetery board, or right or obligation of the cemetery corporation, nor shall it be construed as placing any legal duty or obligation to exercise any right authorized by this subdivision.

(h) Repair or notice as to non-dangerous damage or defacement. Except as otherwise provided by rule or regulation of the cemetery board pursuant to subparagraph two-a of paragraph (c) of section fifteen hundred four of this article, in the event a lot, plot or part thereof is substantially damaged or



defaced which does not present a dangerous condition to persons or property, or in the event a mausoleum, monument or mound in a lot, plot or part thereof is substantially damaged or defaced, and the correction of such condition is not subject to the provisions of paragraph (g) of this section or section fifteen hundred ten-a of this article, the cemetery corporation within thirty days of the discovery of this condition may at its own cost and expense repair the damage or defacement, or if it determines not to do so, the corporation shall within such thirty day period notify the owner, his or her distributee or the person filing an affidavit with such corporation pursuant to the provisions of paragraph (e) of section fifteen hundred twelve of this article of such condition at the last address of such owner, distributee or person appearing on the books and records of the corporation. The notice shall be sent by first class mail and a certificate of mailing shall be obtained. Nothing herein contained shall be construed as establishing any right of damages not otherwise provided by law, rule or contract in any person against the cemetery corporation for failure to repair any condition described or give notice thereof as provided for in this paragraph.

(i) Record of inscriptions to be filed. Whenever, under any general or special law, any cemetery is abandoned or is taken for a public use, the town board of the town or the governing body of the city in which such cemetery is located, shall cause to be made, at the time of the removal of the bodies interred therein, an exact copy of all inscriptions on each headstone, monument, slab or marker erected on each lot or plot in such cemetery and shall cause the same to be duly certified and shall file one copy thereof in the office of the town or city clerk of the town or city in which such cemetery was located and one copy in the office of the state historian and chief of the division of history in the department of education at Albany. In addition to such inscriptions, such certificate shall state the name and location of the cemetery so abandoned or taken for a public use, the cemetery in which each such body was so interred and the disposition of each such headstone, monument, slab or marker.

(j) Grave markers. No cemetery corporation, which provides for the burial of persons of the Jewish faith, shall promulgate any rule or regulation prohibiting the use of cement beds as a means of demarcating a specific grave area. Such cemetery corporations shall provide this service to all persons of the Jewish faith requesting this method of marking a grave when such grave area is provided through the agency of a membership or religious corporation or unincorporated association or society which provides burial benefits for the members. Subject to the rules and regulations promulgated by the cemetery board, such cemetery corporations shall establish the schedule of charges to be assessed for installation and maintenance of cement beds. The schedule of charges shall be filed with and approved by the cemetery board. Such regulation may require the payment of the cost of perpetual care as a condition to such installation and maintenance. The charges assessed shall be paid by the person requesting the service. The provisions of this paragraph shall only be applicable within the counties contained within the first, second, tenth and eleventh judicial districts as such districts are arranged pursuant to section one hundred forty of the judiciary law.

(k) Notice and restoration as to damage and defacement due to vandalism. In the event a monument is damaged or defaced by an act of vandalism, the cemetery corporation shall, within thirty days of the discovery of such damage, notify the owner, his distributee or the person filing an affidavit with such corporation pursuant to the provisions of paragraph one of subdivision (e) of section fifteen hundred twelve of this article of such damage in the manner provided in subdivision (h) of this section. The cost and expense of such notice may be provided from the fund where such fund exists. If

a fund has been established, the cemetery corporation shall restore the monument with moneys from such fund. If such a fund has not been established or where such fund is inadequate to restore the monument, the cemetery corporation may restore such monument at its own cost and expense. Nothing herein contained shall be construed as establishing any right of damages not otherwise provided by law, rule or contract in any person against the cemetery corporation for failure to restore any monument if no monument maintenance fund exists or if such fund is inadequate to restore such monument.

(l) Removal of monument. No person or organization shall remove a monument without authorization in the form of a court order from a court of competent jurisdiction, or without the written authorization of the owner of a burial plot, or the lineal descendants of the deceased, if such owner or lineal descendants are known, and without obtaining written approval from a duly incorporated cemetery association, which association shall keep a record of all such written approvals. The provisions of this section shall not prohibit the removal, in accordance with rules and regulations promulgated by the secretary of state, of a monument for the purpose of repair, nonpayment or adding inscriptions as authorized by a cemetery association or as permitted in this article. A violation of any provision of this paragraph shall be punishable by a fine not to exceed five hundred dollars.

(m) Use of construction and demolition debris for burial. No cemetery corporation or religious corporation having charge and control of a cemetery which heretofore has been or which hereafter may be used for burials, shall use construction and demolition debris, as that term is defined in 6 NYCRR 360-1.2, for the purpose of burying human remains.

*NY CLS N-PCL § 1510-a (2006)*

§ 1510-a. Repair or removal of monuments

(a) Cemetery corporations may repair or remove any monuments or other markers not owned by the cemetery corporation that have fallen into disrepair or dilapidation so as to create a dangerous condition, provided that the cemetery corporation has given not less than sixty days notice by registered or certified mail to the last known owner at that person's last known address to repair or remove the monument or other marker and the said owner has failed to do so within the time provided in said notice.

(b) In the event that the last known owner cannot be found, the notice may be given by publishing the same once each week for three consecutive weeks in a newspaper published or circulated in the county in which the cemetery is located. Such notice shall be addressed to the last known owner and to all persons having or claiming any interest in or to the burial lot on which the monument or other marker is located. The notice shall date from the date of mailing such notice by registered or certified mail, or the date of the third publication in the newspaper.

(c) Any monument or other marker that is removed as provided for in this section shall be replaced with a flush bronze or granite marker suitably inscribed if replacement is appropriate for identification purposes.

(d) Nothing contained herein shall be construed as establishing any right of damages not otherwise provided by law, rule or contract in any person against the cemetery corporation for failure to repair or remedy any condition described or give notice thereof as provided for in this section.

*NY CLS N-PCL § 1511 (2006)*

§ 1511. Cemetery indebtedness

(a) Certificates of indebtedness. (1) If a cemetery corporation be indebted for lands purchased for cemetery purposes, or for services rendered or materials furnished in connection with the necessary and proper preservation or improvement of its cemetery or for moneys borrowed exclusively for payment of such services or materials, the directors, by the concurring vote of a majority of their whole number, with the consent of the creditor to whom such indebtedness is owing, may issue certificates under the corporate seal, signed by the president and secretary, for such amount, payable at the times and at the rate of interest agreed upon but not to exceed six per centum per annum; provided, however, that there be first obtained from the cemetery board an order approving the issuance of such certificates. In the case of certificates of indebtedness issued for moneys borrowed exclusively for payment for services rendered or materials furnished in connection with the necessary and proper preservation or improvement of its cemetery the consent of the creditor to whom such indebtedness is owing shall not be required. (2) Such approval shall be given by the cemetery board only if it determines that the amount of the certificates proposed to be issued does not exceed the fair and reasonable value of the services rendered or materials furnished or the purchase price of real property as fixed in accordance with subdivision (b) of this section. No certificate issued shall be valid or enforceable unless there has first been issued by the cemetery board an order of approval as herein provided. No certificate shall be for less than one hundred dollars. The certificate shall be transferable by delivery, unless therein otherwise provided. (3) The directors shall keep an account of the number and amount of such certificates, the persons to whom issued, the date of maturity, the rate of interest and the purpose for which the same were issued. Each cemetery corporation shall file with the cemetery board a verified statement setting forth all changes in such account during the previous calendar or fiscal year. (4) The directors shall set aside from the proceeds of sales of lots, plots and parts thereof such sums to pay such certificates at maturity as they deem necessary. Until the certificates are paid the holders thereof shall be entitled at all meetings of the corporation, to one vote for each one hundred dollars of indebtedness remaining unpaid, except that those certificates of indebtedness issued for moneys borrowed exclusively for payment of services or materials shall have no voting power. The certificates shall not be a lien upon any lot, plot or part thereof belonging to a lot owner.

(b) Application of proceeds of sales of lots. (1) At least one-half of the proceeds of sales of lots or the use thereof remaining after the deductions for the portion thereof required to be deposited in the permanent maintenance fund and current maintenance fund together with the expenses of sale shall be applied by a cemetery corporation to the payment of the purchase price of the real property acquired by it. The remainder of such proceeds shall be applied by the corporation to preserving, improving and embellishing the cemetery grounds and the avenues and roads leading thereto, and to defraying its expenses and discharging its liabilities. After the payment of such purchase price, and the expense of surveying and laying out the cemetery, all the proceeds of such sales shall be applied to the improvement, preservation and embellishment of the cemetery and to such expenses and li-

abilities. (2) Where a corporation has agreed with a person from whom any such lands were purchased to pay therefor a specified share not exceeding one-half of the proceeds of sales of lots therein or the use thereof, such corporation may continue to make payments as so agreed, provided however that there be first deducted from said proceeds of sales the amount required to be deposited in the permanent maintenance fund and current maintenance fund as aforesaid together with the expenses of sale. The balance of such proceeds shall continue to be applied by the corporation to the preservation, improvement and embellishment of the cemetery, and the expenses and liabilities of the corporation. Where the corporation has heretofore agreed to pay a specified share of the proceeds as aforesaid in payment of the purchase price of land, the prices of lots or the use thereof in force when such purchase was made, shall not be changed, while the purchase price remains unpaid, without the written consent of a majority in interest of the persons from whom the lands were purchased or their legal representatives. (3) A corporation which has heretofore issued certificates of land shares which entitle the owner to a specified share in the proceeds of the sale of lots, may purchase such certificates with its surplus or reserve funds and hold such certificates for the benefit of its surplus or reserve funds, but such certificates may not thereafter be sold or reissued.

(c) Certificates of stock formerly issued. If a cemetery corporation, incorporated under a law repealed by the membership corporations law, prior to September first, eighteen hundred ninety-five, converted its outstanding indebtedness or certificates of indebtedness into certificates of stock, in pursuance of law, no interest shall accrue to the holders of such stock, but they shall receive annually or semi-annually a dividend thereon for their proportional part of the entire surplus or net receipts of the corporation over and above current expenses; or if the proportion of the net receipts or surplus which stockholders shall be entitled to receive shall have been fixed by agreement at the time of issuing such stock, such stockholders shall be entitled to receive dividends in accordance with such agreement. Such certificates of stock shall be transferable only on the books of the corporation on the surrender of the certificate, unless otherwise provided on the face thereof, and on every such surrender a new certificate of stock shall be issued to the person to whom the same has been transferred; and the holders of such stock shall be entitled, in person or by proxy, to one vote for every share thereof, at each meeting of the corporation. A register of the stock issued by the corporation shall be kept by its directors showing the date of issue, the number of shares, the par value thereof, the name of each person to whom issued, the number of the certificates therefor; and all transfers of such stock shall be noted and entered in such register, and the certificates surrendered shall be deemed canceled by the issue of a new certificate, and the surrendered certificate shall be destroyed. Any director may become the holder or transferee of such stock for his own individual use or benefit. No such stock shall be a lien on the lot of any individual lot owner within the cemetery limits; and no other or greater liability of the corporation issuing such stock shall be created or deemed to exist than may be necessary to enforce the faithful application of the surplus or net receipts of the corporation to and among the holders of the stock in the manner hereinbefore specified. A cemetery which has heretofore issued such certificates of stock is a membership corporation and not a stock corporation.

(d) Retirement of certificates of stock of certain cemetery corporations. If a cemetery association, incorporated under a law repealed by chapter five hundred fifty-nine of the laws of eighteen hundred ninety-five has changed certificates of indebtedness into certificates of stock, pursuant to chapter one hundred seven of the laws of eighteen hundred seventy-nine, and such stock remains unimpaired, such association may retire such stock and issue in exchange therefor certificates of indebt-

edness representing the par value of such stock, such certificates of indebtedness to bear interest at a rate not exceeding six per centum per annum from the date of the last preceding dividend payment; provided, however, the exchange of such stock for certificates of indebtedness shall be authorized at a duly called meeting of such association by the affirmative vote of at least two-thirds of the stock issued and outstanding and of at least two-thirds of all votes cast at such meeting in favor of such exchange. Any holder of such stock not voting in favor of the exchange of such stock for certificates of indebtedness may at any time prior to the vote upon such exchange, or if notice of the meeting to vote upon such exchange was not mailed to him at least twenty days prior to the taking of such vote, then within twenty days after the mailing of such notice, object to such exchange and demand payment for his stock and thereupon such stockholder or the corporation shall have the right, subject to the same conditions and provisions contained in section six hundred twenty-three of the business corporation law, to have such stock appraised and paid for as provided in such section. Such objection and demand must be in writing and filed with the corporation. The provisions of this section relating to certificates of indebtedness and the rights of the holders thereof shall apply to certificates of indebtedness issued as provided in this subdivision. The stocks so retired shall not be reissued by such association and it shall have no right thereafter to issue any certificates of stock.

(e) Purchase, retirement and exchange of stock. (1) A cemetery corporation which has issued certificates of stock, pursuant to chapter one hundred seven of the laws of eighteen hundred seventy-nine, or chapter two hundred sixty-seven of the laws of eighteen hundred ninety-four, may purchase such certificates of stock with its surplus or reserve funds, and hold such certificates for the benefit of its surplus or reserve funds, but such certificates of stock so purchased may not thereafter be sold or reissued. (2) A cemetery corporation which has issued certificates of stock may also effect the retirement of such stock as follows: The board of directors of such corporation shall adopt by vote of a majority of the entire number of such directors a plan for such retirement which shall include the fixing of a price which the corporation will pay for all shares of stock then outstanding, which price shall, in the opinion of such directors, represent the fair value of such stock. The said plan shall be submitted to a duly called meeting of the members of such corporation and, if approved by the affirmative vote of at least two-thirds of all votes cast at such meeting, including the affirmative vote of the holders of record of at least two-thirds of all shares of stock issued and then outstanding exclusive of any shares of stock held by the corporation, shall become binding upon all stockholders, and they shall proceed to transfer and surrender to the corporation their certificates of stock and to receive payment therefor in accordance with the terms of such plan. Any holder of shares of such stock not voting in favor of such plan may at any time prior to the vote approving such plan, or if notice of the meeting to vote upon such plan was not mailed to him at least twenty days prior to the taking of such vote, then within twenty days after the mailing of such notice, but in any event within ten days after the taking of such vote, by written notice filed with such corporation, object to such plan and demand appraisal of his shares. Thereupon, such stockholder or the corporation shall have the right, subject to the same conditions and provisions contained in section six hundred twenty-three of the business corporation law, to have such stock appraised and paid for as provided in such section. (3) A cemetery corporation which has issued certificates of stock may also effect the exchange of such stock as follows: The board of directors of such corporation shall adopt by a vote of a majority of the entire number of such directors a plan for the exchange of all shares of stock then outstanding for a like number of participating certificates. Such participating certificates shall entitle the owners to a specified share not exceeding, collectively, one-half of the proceeds of sales of lots therein or the use thereof after first deducting from such proceeds of sale the amount required to be

deposited in the permanent maintenance fund and current maintenance fund as provided in and pursuant to subdivision (a) of section fifteen hundred seven of this article, together with the expenses of sale. Such plan shall then be submitted to the cemetery board for its approval. In making its determination the cemetery board shall consider and may condition its approval on the purposes of this section. Thereafter, if the cemetery board approves such plan, or in the event the cemetery board conditioned its approval and the conditions imposed have been accepted by a vote of a majority of the entire board of directors of the corporation, such plan shall be submitted to a duly called meeting of the members of such corporation, and, if approved by the affirmative vote of at least two-thirds of all votes cast at such meeting, including the affirmative vote of the holders of record of at least ninety per centum of all shares of stock issued and then outstanding exclusive of any shares of stock held by the corporation, shall become binding upon all stockholders. The stockholders shall then proceed to transfer and surrender to the corporation their shares of stock and to receive in exchange therefor participating certificates in accordance with the terms of such plan. Any holder of shares of such stock not voting in favor of such plan may at any time prior to the vote approving such plan, or if notice of the meeting to vote upon such plan was not mailed to him at least twenty days prior to the taking of such vote, then within twenty days after the mailing of such notice, but in any event within ten days after the taking of such vote, by written notice filed with such corporation, object to such plan and demand appraisal of his shares. Thereupon, such stockholder or the corporation shall have the right, subject to the same conditions and provisions contained in section six hundred twenty-three of the business corporation law, to have such stock appraised and paid for as provided in such section. Each such participating certificate issued in exchange for a share of stock shall entitle the holder thereof to one vote for each certificate at all meetings of the corporation. The prices of lots or the use thereof at the time when such exchange is made shall not be changed, while such participating certificates remain outstanding, without the written consent of a majority in interest of the holders thereof except as now or hereafter authorized by law. The shares of stock so exchanged shall not be reissued by such corporation and it shall have no right thereafter to issue any shares of stock.

(f) Exchange of certificates for shares. The directors of a cemetery corporation, which has issued certificates for shares, from time to time by resolution, may fix the value of each of such shares and authorize the acceptance by the corporation of such certificates at the value so fixed in payment for land. All certificates so accepted shall be immediately cancelled and shall not be again issued.

*NY CLS N-PCL § 1512 (2006)*

§ 1512. Rights of lot owners

(a) Lots; indivisible and inalienable. All lots, plots or parts thereof, the use of which has been conveyed as a separate lot, shall be indivisible, except with the consent of the lot owner or lot owners and the corporation, or as in this section provided. After a burial therein, the same shall be inalienable, except as otherwise provided.

(b) Interest of deceased lot owner. Upon the death of an owner or co-owner of any lot, plot or part thereof, unless the same shall be held in joint tenancy, or tenancy by the entirety, the interest of the deceased lot owner shall pass to the devisees of such lot owner, but, if such interest be not effectually devised, then to his or her descendants then surviving, and if there be none, then to the surviving

spouse, and if there be none, then to those entitled to take the real and personal property of the deceased lot owner pursuant to article four of the estates, powers and trust law provided, however, that no interest in any lot, plot or part thereof shall pass by any residuary or other general clause in a will and such interest shall pass by will only if the lot, plot or part thereof sought to be devised is specifically referred to in such will. The surviving spouse of a deceased lot owner during his or her life and the owners from time to time of the deceased lot owner's lot, plot or part thereof, shall have in common the possession, care and control of such lot, plot or part thereof.

(c) Purchase for burial of decedent. Whenever a lot, plot or part thereof shall be purchased by the executor, administrator or representative of a decedent from estate funds for the burial of the decedent, the surviving spouse of the decedent shall have the right of interment therein, and the deed shall run to the names of the distributees, other than the surviving spouse, of the decedent, or to "The distributees, other than the surviving spouse, of -----, deceased", if there be such surviving spouse, otherwise to "The distributees of -----, deceased." If the deed shall run to "The distributees, other than the surviving spouse of -----, deceased," or to "The distributees of -----, deceased," the executor, administrator or representative shall, at the time of delivery of the deed to such lot, plot or part thereof, file with the corporation an affidavit setting forth the names and places of residence of all the decedent's distributees, and the corporation shall be entitled to rely upon the truth of the statements contained in such affidavit.

(d) Right of interment. A deceased person shall have the right of interment in any lot, plot or part thereof of which he or she was the owner or co-owner at the time of his or her death, or in any tomb erected thereon. The surviving spouse shall have the right of interment for his or her body in a lot or tomb in which the deceased spouse was an owner or co-owner at the time of his or her death, except where all the available burial spaces in a lot or tomb have been designated for the interment of persons other than the surviving spouse, pursuant to subdivision (f) of this section, and a right to have his or her body remain permanently interred or entombed therein, except, that such body may be removed therefrom as provided in subdivision (e) of section fifteen hundred ten of this article. Such right may be enforced and protected by his or her personal representatives. The remains of a spouse, parent or child of a person who is an owner or co-owner thereof may be interred in such lot or tomb without the consent of any person claiming any interest therein, subject, however, to the following rules and exceptions: (A) The place of interment in such lot shall be subject to the reasonable determination by a majority of the co-owners or in the absence of such determination by the cemetery corporation or its officer or agent having immediate charge of interments. (B) Any husband or wife living separate from the other and owning a lot in which the other, but for this section, would have no right of burial, at least thirty days before the death of the other, may file with the cemetery corporation a written objection to the interment of the other, and thereupon there shall be no right of interment under this subdivision. (C) A parent or child owning a lot in which the other would have no right of burial but for this section, at least thirty days before the death of the other, may file with the cemetery corporation a written objection to the interment of the other, and thereupon there shall be no right of interment under this subdivision. In such case, if the parent or child so excluded from burial in such lot shall die without having any place of interment, then the person filing such objection shall at once provide for the other a suitable place of burial in a convenient cemetery. The cost of such place of interment shall be chargeable to the decedent's estate, if any. (D) This section shall not permit a burial in any ground or place contrary to or in violation of any precept, rule, regulation or usage of any church or religious society, association or corporation restricting burial therein. This



subdivision shall not limit any existing right of burial under other provisions of law, nor shall it limit or curtail the right of alienation, under the rules of the cemetery corporation wherein such lot is situated, by the owner of a lot before the death of the person for whose remains the right of burial is provided herein, and there shall be no right of burial in any lot sold by its owner, before the death of the person for whose remains the right of burial is provided herein.

(e) More than one person entitled to possession and control. (1) At any time when more than one person is entitled to the possession, care and control of such lot, any of the persons so entitled thereto may file with the corporation an affidavit setting forth the names and places of residence of all the persons entitled to the possession, care and control of such lot, and the corporation shall be entitled to rely upon the truth of the statements contained in such affidavit. The corporation shall be entitled to collect a reasonable fee for filing and recording such affidavit and other documents filed in its office. (2) At any time when more than one person is entitled to the possession, care or control of such lot, plot or part thereof, the persons so entitled thereto shall file with the corporation a designation of a person who shall represent the lot, plot or part thereof, and so long as they shall fail to designate, the corporation may make such designation. A distributee may release his or her interest in a lot, plot or part thereof, to the other distributees, and a joint owner may release or devise to the other joint owners, his or her right in the lot, plot or part thereof, on conditions specified in the release or will, the original or certified copy of which shall be filed in the office of the corporation. The surviving spouse not excluded from the right of burial under the provisions of subdivision (d) of this section, at any time may release his or her right in such lot, plot or part thereof, but no conveyance or devise by any other person shall deprive him or her of such right.

(f) Designation of persons who may be interred. At any time all the owners of a lot, and any surviving spouse having a right of interment therein, may execute, acknowledge and file with the corporation an instrument, and the sole owner of a lot may, in a testamentary instrument admitted to probate, make a provision, which may (A) designate the person or persons or class of persons who may thereafter be interred in said lot or in a tomb in such lot and the places of their interment; (B) direct that upon the interment of certain named persons, the lot or tomb in such lot shall be closed to further interments; (C) direct that the title of the lot shall upon the death of any one or more of the owners, descend in perpetuity to his, her or their distributees, unaffected by any devise. In any case in which an irrevocable designation of a person, persons or class of persons who may be interred in any lot or tomb has been made pursuant to this subdivision and in which the designated person or persons, or all of the known class of designated persons, have died and have not been buried in the places designated in said lot or tomb, or have by a written instrument duly signed and acknowledged and filed with the corporation, renounced the right of interment pursuant to such designation, then, and in any such event, the then owner or owners of said lot or tomb and any surviving spouse having the right of interment therein, may designate another person or persons or class of persons who may thereafter be interred in said lot or in a tomb in said lot, and the places of their interment, unless the original designation clearly indicated not only that it was irrevocable, but also that no further designations were to be made. Any designation provided for by this subdivision except a designation by testamentary instrument, shall be deemed revocable unless such instrument provides otherwise. In the event an owner or co-owner of a lot is under the age of eighteen years, any designation provided for by this subdivision, except a designation by testamentary instrument, may be executed and acknowledged by the parent or general or testamentary guardian for and on behalf of such owner or co-owner, provided, however, that no such designation may be made unless a place of in-

terment shall remain available in said lot or in a tomb in such lot for the interment of each owner or co-owner of the lot under the age of eighteen years, and any designation so made may be revoked by the owner or co-owner upon reaching the age of eighteen years except with respect to burials effected before that time. A designation made by a parent or guardian on behalf of an infant owner or co-owner who is over the age of fourteen years must contain the written consent of such infant owner or co-owner.

(g) Lot owner voting. Each owner of full age of a lot in the cemetery of the corporation, as shown in the records of the cemetery at the time of the purchase of the lot from the corporation, or if there be two or more owners, then one of them designated in writing by a majority of them, may cast, in person or by proxy, one vote at meetings of the corporation in respect to each such lot so owned. At such meetings, each owner of a certificate of stock heretofore lawfully issued shall be entitled to one vote for each share of stock owned by him and each owner of a certificate of indebtedness shall be entitled to one vote for each one hundred dollars of such indebtedness remaining unpaid. No lot owner shall be entitled to vote unless all assessments against the lot of such owner shall have been paid. A quorum for the transaction of business, unless the certificate of incorporation or by-laws otherwise provide, shall be five members entitled to vote at the meeting. In the event a lot owner has executed a proxy which has been in effect for five or more years, the cemetery corporation shall not honor such proxy unless it is presented with proof that the lot owner has been sent a written notice at the address listed in the records of the corporation at least thirty days prior to the meeting at which the proxy is to be exercised advising the lot owner that the proxy is still effective. The notice shall identify the date, time and place of such meeting, and the name of the person holding the proxy and shall state that it may, unless the proxy provides otherwise, be terminated at any time. Such notice need not be mailed more frequently than every fifth year.

(h) Plots owned by religious corporations, unincorporated associations, or other entities that provide burial benefits for its members. With respect to any lot, plot or part thereof owned by a membership or religious corporation or unincorporated association or other entity that provides burial benefits for its members, and requires the cemetery to obtain a burial authorization from the membership, religious corporation, unincorporated association, or other entity, the following rules shall apply:

(1) If a cemetery receives a request to bury an individual who was a member of a membership, religious corporation, unincorporated association, or other entity that owns the lot, plot or part thereof in which the burial would be made, and despite reasonable efforts on the part of the family of the deceased, the funeral home, and/or the cemetery, no representative of the membership, religious corporation, unincorporated association, or other entity that owns the lot, plot or part thereof in which the burial would be made can be located to authorize the burial, the cemetery may, at its discretion, proceed with the interment provided that documentary evidence indicating a specific grave reservation in the lot, plot or part thereof, for the deceased individual is provided to the cemetery and further that the cemetery has recorded such reservation on its books and in its records;

(2) If the decedent is within the first degree of consanguinity to an individual already interred in the lot, plot or part thereof, or the spouse of the decedent is already interred in the lot, plot or part thereof, the cemetery may, at its discretion, proceed with the interment, provided some form of documentary evidence is provided to the cemetery as to the decedent's right of burial in the lot, plot or part thereof;

(3) The right of memorialization shall, under the circumstances described in this paragraph, pass to the person with the right of possession of the body at the time of burial; and

(4) Neither the cemetery nor the funeral director shall be liable for any claims, in law or equity, relating to the failure to obtain authorization from the membership, religious corporation, unincorporated association, or other entity for the use of the plot, lot, or portion thereof provided that the requirements of this paragraph have been met.

*NY CLS N-PCL § 1513 (2006)*

§ 1513. Sale of burial rights

(a) Conveyance of lots. (1) Except as otherwise provided in this subdivision the right to use any lot, plot or part thereof may be sold or conveyed only by the cemetery corporation. (2) It shall be unlawful for any person, firm or corporation to purchase or for a cemetery corporation to sell a lot, plot or part thereof for the purpose of resale. This provision, however, shall not prohibit the sale to its members of lots, plots or parts thereof, or the right to use any lot, plot or part thereof, by a membership or religious corporation or unincorporated association or society which provides burial benefits for its members. (3) It shall be unlawful for a cemetery corporation to pay or offer to pay, or for any person, firm or corporation to receive, directly or indirectly, a commission, bonus, rebate or other things of value for, or in connection with, the sale of any lot, plot or part thereof, or the sale of space in a public mausoleum, or the furnishing by or through the cemetery corporation of any service, merchandise, wares, goods or articles. The provisions of this paragraph shall not apply to a person regularly employed and supervised by the cemetery corporation. (4) A violation of this subdivision shall constitute a misdemeanor and shall be punishable by a fine of not more than five hundred dollars or not more than six months imprisonment or both. Each violation shall constitute a separate offense.

(b) Prices for burial rights and instruments of conveyance. (1) The directors must fix and determine the prices of the burial lots, plots or parts thereof, and keep a plainly printed copy of the schedules of such prices conspicuously posted in each of the offices of the corporation, open at all reasonable times to inspection, and shall file a schedule of such prices in the office of the cemetery board. (2) Unless its certificate of incorporation or by-laws otherwise provide, and subject to its rules and regulations, the corporation shall sell and convey to any person the use of the lots, plots or parts thereof designated on the map filed in the office of the corporation, on payment of the prices so fixed and determined, but need not sell and convey more than one lot, plot or part thereof to any one person. Conveyances of lots, plots and parts thereof shall be signed by the president or vice-president and treasurer or assistant treasurer of the corporation. A written contract for the sale or use of a lot, plot or part thereof shall have attached thereto and made a part thereof a copy of the rules and regulations of the cemetery corporation or such parts of such rules and regulations as relate to the size and placement of monuments, restrictions on plot usage, warranties, obligations of the cemetery corporation and financial obligations and duties of the lot owner. If a lot, plot or part thereof is sold without a written contract, the corporation shall, before any part of the purchase price is paid by the purchaser, deliver to the purchaser a copy of the rules and regulations or such parts thereof as would be required to be attached to a written contract. Nothing in this subdivision shall prevent the subsequent amendment of such rules and regulations to increase the charges for services rendered by the corporation or in other particulars by or with the consent of the cemetery board un-

der section fifteen hundred nine of this article. (3) A cemetery corporation that shall sell a lot, plot or part thereof, in excess of the price shown on the schedule filed in the office of the cemetery board, and any person acting for or on behalf of the cemetery corporation in connection with such sale, shall each forfeit to the people of the state of New York a sum equivalent to three times the excess amount so paid. Such penalty may be recovered in a civil action by the cemetery board. (4) The instrument of conveyance of any burial lot, plot or part thereof shall include the actual amount paid therefor and a description showing the dimensions of the property conveyed, and the plot number, section and block number as they appear on the cemetery map.

(c) Resale by lot owner. Before any burial shall have been made in any such lot, plot or part thereof, or, if all the bodies therein have been lawfully removed, the lot owner may sell or convey such lot, plot or part thereof subject to the prior approval of the cemetery board. Such approval shall not be granted unless the owner of such lot, plot or part thereof shall have offered it to the cemetery corporation within two years prior to the application for such approval, in writing by registered or certified mail, at the price paid therefor by said lot owner, together with simple interest at the rate of four per centum per annum, and the cemetery corporation shall have failed to accept such offer within thirty days after the making thereof. In the event the lot owner shall have acquired the lot, plot or part thereof other than by purchase, and provided the cemetery corporation and the lot owner cannot agree upon a price, the cemetery board shall fix a price therefor. In arriving at the price the cemetery board shall take into consideration the original price for which the cemetery corporation sold the lot, plot or part thereof, and any other circumstances or factor which equitably relates to the price. The secretary of the cemetery corporation shall file and record in its books all instruments of transfer. An owner may convey or devise to the corporation his right and title in and to any such lot, plot or part thereof.

(d) Lots held in inalienable form. (1) No portion of the cemetery of a cemetery corporation which any person other than the corporation is entitled to use for burial purposes, or in which bodies have been buried and not removed, shall be sold, mortgaged or leased by the corporation. A cemetery corporation may convey any lot so that upon such conveyance, or after an interment therein, such lot shall be forever inalienable, and upon the death of the lot owner shall pass to such person or persons as may be designated in the conveyance or if no such designation be made, shall descend as provided in section fifteen hundred twelve of this article. Any one or more of the owners of such a lot may release or devise to any other owner of the lot his interest therein on such conditions as shall be specified in the release or will. (2) Any person who is the sole owner of the burial rights in a cemetery lot, plot or any part thereof, in which a burial has been made, may give his entire interest, or, if not prohibited by the rules and regulations of the cemetery corporation, any portion thereof to any person within the third degree of consanguinity to the owner, or, in the event that no such person exists, within the fourth degree of consanguinity to such owner. Such conveyance shall be made subject to the right of interment of the spouse of any deceased owner, which right said spouse may release at any time, but no conveyance or devise by any other person shall deprive the surviving spouse of such right. Burial rights shall not be conveyed pursuant to the provisions of this subparagraph more frequently than once in any ten-year period. (3) A cemetery corporation may take and hold any lot conveyed or devised to it by the lot owner so that thereafter it will be inalienable, and the interments therein shall be restricted to such person or class of persons as may be designated in the conveyance or devise. (4) The title of a lot owner shall not be affected by the dissolution of the

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corporation, by non-user of its corporate rights and franchises by any act of forfeiture on its part, by any alienation of its property or by incumbrance thereon made or suffered by it.

*NY CLS N-PCL § 1513-a (2006)*

§ 1513-a. Reacquisition of a lot, plot or part thereof by a cemetery corporation

A cemetery corporation may, upon application and approval by the cemetery board, reacquire, resubdivide, and resell a lot, plot or part thereof under the following circumstances:

(a) (i) If the records of the corporation demonstrate that the lot, plot or part thereof was purchased more than seventy-five years prior to the application of the corporation; and (ii) if no burials have been made in the lot, plot or part thereof or all the bodies therein have been lawfully removed; and (iii) if neither the owner or owners of the lot, plot or part thereof nor any person having a credible claim to ownership who has visited, made payments in respect of or engaged in any other proprietary activities with respect to the lot, plot or part thereof can be identified after a reasonable search conducted by the cemetery corporation, it shall be conclusively presumed that the owner or owners of the lot, plot or part thereof have abandoned their burial rights. A reasonable search consists of a search of: (1) all cemetery records to determine the name of the owner or owners of the lot, plot or part thereof, their last known addresses and all information available to the cemetery relating to any person buried in the lot, plot or part thereof and the names and last known addresses of any persons making inquiry about or visiting the lot, plot or part thereof; (2) a search for the death certificates and the probated wills of the owner or owners of the lot, plot or part thereof; (3) the posting of notice by the cemetery at the entrance to the cemetery and in the cemetery office, if any, of its intention to declare the lot, plot or part thereof abandoned; (4) the mailing of such notice certified mail with return receipt requested to the owner or owners of the lot, plot or part thereof and each person identified during the reasonable search at their last known addresses; (5) publication of such notice once in each week for three successive weeks, in two newspapers of regular commercial circulation by subscription and/or newsstand sale, to be designated by the county clerk of the county where the cemetery is located which in his or her judgment, given the ethnic, religious, geographic or other related demographic characteristics of the owner or owners of the lot, plot or part thereof and each person identified through the reasonable search and the predominant readership of such newspapers are best calculated to inform the owner or owners of the lot, plot or part thereof and each person identified through the reasonable search of any application pursuant to the provisions of this section; and (6) the preparation of an affidavit describing the steps taken by the cemetery corporation to ascertain the identity of and to contact the current owner or owners of the lot, plot or part thereof or next-of-kin thereof or any other persons identified in the course of the reasonable search who might have relevant information and the results of such steps. After the filing with the cemetery board of proof of compliance with the above requirements in form and substance reasonably satisfactory to such board and upon approval by the cemetery board, the lot, plot or part thereof may be resold by the cemetery to any party in compliance with the cemetery rules and regulations provided, however, that any monument subsequently placed on such lot, plot or part thereof shall conform to the general appearance of any existing monuments in said section of lots, plots or parts thereof, if any.

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(b) If (i) the circumstances described in paragraph (a) of this section exist except that one or more burials have been made in a lot, and the last burial was made more than seventy-five years

prior to the application, (ii) the lot, plot or part thereof can be subdivided to create new graves, (iii) the bodies have not been lawfully removed, and (iv) the cemetery submits an application to the cemetery board which complies with the requirements set forth in paragraph (a) of this section, it shall be conclusively presumed that the lot owner has abandoned the right to make further burials in the lot, the lot may be subdivided, and the resubdivided lot, plot or parts thereof which do not contain the remains of the deceased persons may be resold by the cemetery corporation as provided in this section. Nothing in this section shall permit a cemetery corporation to declare abandoned a lot, plot or part thereof, where such lot, plot or part thereof was purchased for multiple depth burials and where one or more burials has occurred or authorized a cemetery corporation to remove a monument or other embellishment to facilitate the resale of such lot, plot or part thereof, except as provided by section fifteen hundred ten of this article.

(c) If the owner or owners of a lot, plot or part thereof can be identified, the cemetery corporation, with the consent of the owner or owners of the lot, plot or part thereof, the lot, plot or part thereof may be resubdivided, and the resubdivided lot, plot or part thereof which does not contain the remains of deceased persons may be resold by the cemetery corporation, provided, however, if no burial has been made in the lot, plot or part thereof, in the twenty-five year period preceding such application, the owner of a lot, plot or part thereof has notified his or her parents, spouse, issue, brothers, sisters, grandparents, and grandchildren, if any, of the application to the cemetery board, and provided further, however, if a burial has been made in this lot, plot or part thereof during such twenty-five year period, the spouse and issue of such deceased person are also notified, and provided further, in either case the owner of the lot, plot or part thereof satisfies the cemetery board that none of the persons notified have agreed within forty-five days of notification to purchase the lot, plot or part thereof at the price provided under paragraph (c) of section fifteen hundred thirteen of this article.

(d) Upon the sale of a lot, plot or part thereof reacquired by the corporation under the provisions of paragraph (a), (b), or (c) of this section, thirty-five percent of the net proceeds shall be placed in the permanent maintenance fund and sixty-five percent shall be placed in the current maintenance fund.

(e) If the owner of the lot, plot or part thereof is subsequently identified, the cemetery corporation shall: (i) return all unsold lots, plots or parts thereof if any, to the owner if so requested; and (ii) with respect to any lots, plots or parts thereof that have been sold pursuant to this section, at the option of the owner of the lot, plot or part thereof; either (1) provide the owner, at no cost to the owner, with a lot, plot or part thereof comparable to any lot, plot or part thereof that was sold by the cemetery corporation or (2) provide the owner with the proceeds from the sale of the lot, plot or part thereof reacquired under this section with interest thereon from the date of the sale at six percent per annum.

(f) The provisions of this section shall not apply to a lot, plot or part thereof whose record owner is a corporation or unincorporated association or society having among its activities or its former activities the provision of burial benefits for its members.

(g) The provisions of this section shall not violate the burial requirements of sectarian sections of cemetery corporations.

(h) Monuments to be erected on a lot, plot or parts thereof, following the resale of a lot, plot or part thereof, shall conform to the rules and regulations or other requirements of the cemetery corpo-

ration and shall conform to the size, style and type of monuments in the section of the cemetery where such resale occurs.

*NY CLS N-PCL § 1514 (2006)*

§ 1514. Misdemeanor; general penalty

Wherever under the provisions of this article a person violating any part thereof is deemed to be guilty of a misdemeanor and no specific penalty is provided, the penalty for each separate violation shall be imprisonment for not more than six months or a fine of not more than five hundred dollars, or both.

*NY CLS N-PCL § 1515 (2006)*

§ 1515. Actions affecting cemetery corporations

In any action or proceeding affecting or instituted by any cemetery corporation the cemetery board shall be served with notice thereof in the same manner as any necessary party and shall take such steps in the action or proceeding as it may deem necessary to protect the public interest.

*NY CLS N-PCL § 1516 (2006)*

§ 1516. Sale of monuments

(a) No cemetery corporation shall engage in the sale of monuments, not including flush bronze markers, nor shall such monuments be displayed for sale on the property of a cemetery corporation.

(b) No cemetery corporation shall authorize or permit any employee or director thereof to advertise or make known his or her relationship to such corporation while engaged in the sale of monuments outside of his or her employment by the cemetery corporation.

(c) With regard to the sale of flush granite markers, the cemetery board shall adopt reasonable rules and regulations to exempt cemetery corporations from the provisions of paragraph (a) of this section where a practice for the sale of such flush granite markers was established with the knowledge and approval of the cemetery board prior to the effective date of this section.

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(16) "Historic dollar value" means the aggregate fair value in dollars of (i) an endowment fund at the time it became an endowment fund, (ii) each subsequent donation to the fund at the time it is made, and (iii) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the corporation is conclusive.

(17) "Institutional fund" means a fund for the exclusive use, benefit or purposes of a corporation, held either by the corporation itself or on behalf of the corporation by a person or entity whose sole authority with respect to the fund has been delegated by the corporation pursuant to section 514 (Delegation of investment management), but does not include (i) a fund held for a corporation by a trustee that is not a not-for-profit corporation (other than a trustee whose sole authority with respect to the fund has been delegated by the corporation pursuant to section 514), or (ii) a fund in which a beneficiary that is not a not-for-profit corporation has an interest (other than possible rights that could arise upon violation or failure of the purposes of the fund).

(18) "Authorized person" means a person, whether or not a member, officer, or director, who is authorized to act on behalf of a corporation or foreign corporation.

(19) [Eff April 9, 2006] "Person" means any association, corporation, joint stock company, estate, general partnership (including any registered limited liability partnership or foreign limited liability partnership), limited association, limited liability company (including a professional service limited liability company), foreign limited liability company (including a foreign professional service limited liability company), joint venture, limited partnership, natural person, real estate investment trust, business trust or other trust, custodian, nominee or any other individual or entity in its own or any representative capacity.

(a) Every corporation to which this chapter applies and which is in existence on September 1, 1970, except those described in paragraph (b) of this section, shall in all respects be considered a type B corporation unless it shall deliver to the department of state a signed certificate, entitled "Certificate of type of not-for-profit corporation of . . . . . (name of corporation) under *section 113 of the Not-for-Profit Corporation Law*", or unless its certificate of incorporation has been amended to state its type under section 201 (Purposes). A certificate of type shall set forth:

(1) The name of the corporation and, if its name has been changed, the name under which it was formed.

(2) The date its certificate of incorporation was filed by the department of state and the law under which it was formed.

(3) A designation of the secretary of state as agent of the corporation upon whom process against it may be served and post office address within or without this state to which the secretary of state shall mail a copy of any process against it served upon him.

(4) That under section 201 (Purposes) it is a Type ---- (insert A, B, C or D) not-for-profit corporation as defined in this chapter.

(b) The following corporations are exempt from the provisions of paragraph (a)

(1) A corporation to which is applicable, and whose type is determined by, the education law, the religious corporations law and the private housing finance law.

(2) A corporation formed under an article of the membership corporations law or any predecessor general law or special act, which if formed currently would be formable under, and its type determined by, a section of article fourteen hereof.

(3) A corporation otherwise within the provisions of paragraph (a), which has as its principal purpose a religious, educational or charitable purpose, and is operated, supervised or controlled by or in connection with a religious corporation.

(4) A corporation having a right under paragraph (a) of section 103 (Application) to elect to file a certificate of type under this section.

(5) Anything to the contrary herein notwithstanding any corporation exempt hereunder may deliver a certificate of type described in paragraph (a) to the department of state.

(c) [Repealed]

(d) A corporation formed by or pursuant to a special act which elects to file a certificate of type, as authorized under paragraph (a) of section 103 (Application), shall file at any time after the effective date of this chapter a certificate of type setting forth, in addition to the items in subparagraphs (1) through (4) of paragraph (a), a statement that it elects to have this chapter apply in all respects to it.

Type A--A not-for-profit corporation of this type may be formed for any lawful non-business purpose or purposes including, but not limited to, any one or more of the following non-pecuniary purposes: civic, patriotic, political, social, fraternal, athletic, agricultural, horticultural, animal husbandry, and for a professional, commercial, industrial, trade or service association.

Type B--A not-for-profit corporation of this type may be formed for any one or more of the following non-business purposes: charitable, educational, religious, scientific, literary, cultural or for the prevention of cruelty to children or animals.

Type C--A not-for-profit corporation of this type may be formed for any lawful business purpose to achieve a lawful public or quasi-public objective.

Type D--A not-for-profit corporation of this type may be formed under this chapter when such formation is authorized by any other corporate law of this state for any business or non-business, or pecuniary or non-pecuniary, purpose or purposes specified by such other law, whether such purpose or purposes are also within types A, B, C above or otherwise.

(c) If a corporation is formed for purposes which are within both type A and type B above, it is a type B corporation. If a corporation has among its purposes any purpose which is within type C, such corporation is a type C corporation. A type D corporation is subject to all provisions of this chapter which are applicable to a type B corporation under this chapter unless provided to the contrary in, and subject to the contrary provisions of, the other corporate law authorizing formation under this chapter of the type D corporation.

(a) The certificate of incorporation may provide that the corporation shall be authorized by resolution of the board to accept subventions from members or non-members on terms and conditions not inconsistent with this chapter, and to issue certificates therefor. Subvention certificates shall be nontransferable unless such resolution provides that they shall be transferable, either at will or subject to specified restrictions.

(b) A subvention shall consist of money or other property, tangible or intangible, actually received by the corporation or expended for its benefit or for its formation or reorganization, or a combination thereof. In the absence of fraud in the transaction, the judgment of the board as to the value of the consideration received by the corporation shall be conclusive.

(c) The rights of holders of subvention certificates shall at all times be subordinate to the rights of creditors of the corporation.

(d) The resolution of the board may provide that holders of subvention certificates shall be entitled to a fixed or contingent periodic payment out of the corporate assets equal to a percentage of the original amount or value of the subvention, but such payment shall not exceed two-thirds of the maximum interest rate authorized pursuant to *section 5-501 of the general obligations law*.

(e) The resolution of the board may provide that a subvention shall be redeemable, in whole or in part, at the option of the corporation at such price or prices (not to exceed the original amount or value of the subvention plus any periodic payments due or accrued thereon), within such period or periods, and on such terms and conditions, not inconsistent with this chapter, as are stated in the resolution.

(f) The resolution of the board may provide that holders of all or some subvention certificates shall have the right to require the corporation after a specified period of time to redeem such certificates, in whole or in part, at a price or prices that do not exceed the original amount or value of the subvention plus any periodic payments due or accrued thereon, upon an affirmative showing that the financial condition of the corporation will permit the required payment to be made without impairment of its operations or injury to its creditors. The right to require redemption may in addition be conditioned upon the occurrence of a specified event. For the purpose of enforcing their rights under this para-

graph, holders of subvention certificates shall be entitled to inspect the books and records of the corporation.

(g) Holders of subvention certificates, upon dissolution of the corporation, shall be entitled, after the claims of creditors have been satisfied, to a repayment of the original amount or value of the subvention plus any periodic payments due or accrued thereon, unless a lesser sum is specified in the certificate of incorporation or the resolution of the board concerning such subvention.

*NY CLS N-PCL § 505 (2006)*

§ 505. Subvention certificates

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(a) Each subvention certificate shall be signed by the chairman or a vice-chairman of the board or the president or a vice-president and the secretary or an assistant secretary or the treasurer or an assistant treasurer of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the officers upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent or registered by a registrar other than the corporation itself or its employees. In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of issue.

(b) Each subvention certificate shall when issued state upon the face thereof:

(1) That the corporation is a Type ----- corporation under section 113 or *section 402 of the New York Not-for-Profit Corporation Law*.

(2) The name of the person or persons to whom issued.

(3) The amount of the subvention evidenced by such certificate.

(4) The amount of the periodic payment thereon, if any, authorized by the resolution of the board.

(5) If appropriate, that the certificate is redeemable and a summary of the conditions for redemption at the option of the corporation or of the holder.

(6) If appropriate, that the certificate is transferable, either at will or subject to specified restrictions.

(c) The fact that the corporation is a not-for-profit corporation and, where appropriate, that the certificate is transferable at will or subject to restrictions, shall be noted conspicuously on the face or back of each such certificate.

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(e) Notwithstanding any law to the contrary, a certificate of amendment of a corporation whose statement of purposes specifically includes the establishment or operation of a

child day care center, as that term is defined in section three hundred ninety of the social services law, shall provide a certified copy of such certificate to the office of children and family services within thirty days after the filing of such certificate with the department of state.