

New Code Changes for Profit and Non-Profit Corporations

Taking Effect October 1, 2002

Filing Requirements

§31D-1-120 (profit)

§31E-1-120 (non-profit)

- ▶ This section allows for electronic filing if available through the Office of Secretary of State. It also indicates general requirements such as who may execute a document.
- ▶ It allows for a document to be executed by the chairman of the board of directors, by its president, or by another of its officers, or if directors have not been selected by an incorporator.
- ▶ The document may contain an acknowledgment or verification but it is not required.
- ▶ It eliminates the current requirement of having to record filed documents in the county clerk's office.
- ▶ Only one original document is required, however if the filer wants a stamped/filed copy returned with the certificate then two originals should be sent

Effective time and date of document.

§31D-1-123 (profit)

§31E-1-123 (non-profit)

Provisions allow for a document to specify a delayed effective time and date, but may not be later than the ninetieth day after the date it is filed.

Correcting Filed Documents.

§31D-1-124 (profit)

§31E-1-124 (non-profit)

This is a new provision that allows for the correction of a document filed with the Office of Secretary of State without refiling the whole document or having to file articles of amendment.

Filing Duty of Secretary of State.

§31D-1-125 (profit)

§31E-1-125 (non-profit)

This provision allows the Secretary of State to return a receipt for the filed document, instead of a copy. However, the Office of Secretary of State will return a receipt for payment as well as a certificate of filing.

Certificate of Existence.

31D-1-128 (profit)

31E-1-128 (non-profit)

This provision eliminates issuing good standing certificates and replaces it with a "Certificate of Existence" for a domestic corporation and a "Certificate of Authorization" for a foreign corporation.

Penalty for Signing a False Document.

§31D-1-129 (profit)

§31E-1-129 (non-profit)

This is a new provision, making it a misdemeanor offense for signing a document that the person knows to be false and delivering it for filing by the Secretary of State and, if convicted, carries a fine of not more than one thousand dollars or confined in the county or regional jail not more than one year, or both.

Articles of Incorporation.

§31D-2-202 (profit)

Eliminates these current provisions:(1) period of duration of the corporation (2) designation of classes of shares (3) designation of preferred shares or special classes or series of shares, (4) any preemptive rights of shareholders and, (5) eliminates the notarization of the articles of incorporation.

Articles of Incorporation.

§31E-2-202 (non-profit)

Eliminates the current provisions of (1)period of duration of the corporation and (2) eliminates the notarization of the articles of incorporation. New provision requires the listing in the articles of incorporation as to whether the corporation is to have members and, if so, certain information about the classes of members and adds provisions allowing corporations to put limitations on the personal liability of its directors or members in the articles of incorporation.

Registered Name.

§31D-4-404 (profit)

§31E-4-404 (non-profit)

The renewal period for registration of a name is changed from a fiscal year to a calendar year. The period of renewal will be from October 1 through December 31

Change of Registered Office or Registered Agent.

§31D-5-502 (WV profit), §31E-5-502 (WV non-profit)

§31D-15-1508 (foreign profit) §31E-15-1508 (foreign non- profit)

Adds a new provision, that if the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, be either on the filing statement or attached to it.

Required Officers.

§31D-8-840 (profit)

§31E-8-840 (non-profit)

Provision will eliminate the requirement of having all four offices held, such as the president, secretary and treasurer as well as eliminating the current restriction on holding one or more offices, regardless of which position it is.

Articles of Dissolution.

§31D-14-1403 (profit)

Provisions will eliminate the filing of an intent to dissolve, requiring only that the "articles of dissolution" be filed with the Secretary of State and also, eliminates the notarization of the articles of dissolution.

§31E-13-1303 (non-profit)

Provision will eliminate the requirement of having to publish a Class II advertisement of the Notice of the Resolution to Dissolve, eliminates the notarization of the articles of dissolution, requiring only that the "articles of dissolution" be filed with the Secretary of State and eliminates the notarization of the articles of dissolution.

Application for Certificate of Authority.

§31D-15-1503 (profit)

§31E-14-1403 (non-profit)

Provision will eliminate the restriction against church, religious sects or denominations qualifying to do business in West Virginia and makes it a requirement for a corporation to file a certificate of existence from where it is incorporated with its application.

Withdrawal of Foreign Corporation.

§31D-15-1520 (profit)

§31E-14-1420 (non-profit)

Provision eliminates the requirement of having to publish notice of withdrawal and eliminates the notarization on the application to withdrawal.