

Chapter 61

1987 REPLACEMENT PART

Nonprofit Corporations

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GENERAL

(Short Title and Definitions)

61.005 Short title. ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950 shall be known and may be cited as the "Oregon Nonprofit Corporation Law." [1959 c 580 §1]

61.010 [Repealed by 1959 c.580 §104]

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

(1) "Anniversary" means that day each year exactly one or more years after:

(a) The date of filing by the Secretary of State of the articles of incorporation in the case of a domestic corporation.

(b) The date of filing by the Secretary of State of an application for authority to transact business in the case of a foreign corporation.

(2) "Articles of incorporation" includes the original or restated articles of incorporation, special laws or charters corresponding thereto, all amendments thereto and articles of merger or consolidation.

(3) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated.

(4) "Bylaws" 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.

(5) "Corporation" or "domestic corporation" means a nonprofit corporation subject to the provisions of this chapter except a foreign corporation.

(6) "Foreign corporation" means a nonprofit corporation organized under laws other than the laws of this state.

(7) "Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

(8) "Nonprofit corporation" means a corporation no part of the income of which is distributable to its members, directors or officers. [1959 c.580 §2, 1963 c 479 §32, 1987 c 94 §36]

61.015 Applicability. The provisions of ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950 relating to domestic corporations shall apply to:

(1) All corporations organized hereunder.

(2) All nonprofit corporations heretofore organized for a purpose or purposes for which a corporation might be organized under ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950 which were organized under or were otherwise subject to the provisions of any Act hereby repealed, subject to the following limitations: A corporation subject to ORS 61.310, 61.320, 61.330, 61.340, 61.350, 61.360, 61.470, 61.480, 61.490, 61.500, 61.580, 61.590 or 63.060 (1957 Replacement Part) shall continue to be subject thereto as though the provisions thereof applicable to such corporation were included in its articles of incorporation. The corporation shall have the power to amend or eliminate such provisions in the manner provided in ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950 for amendment of articles of incorporation. The corporation may, but shall not be required to, amend its articles of incorporation immediately to set out such provisions. If the corporation desires in the future to amend its articles in any respect, it must restate its articles in a form consonant with the provisions of ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950. After such amendment, the provisions of this subsection shall no longer apply to the corporation.

(3) All other nonprofit corporations heretofore organized under the laws of this state for a purpose or purposes for which a corporation might be organized under ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950, but only when such other nonprofit corporation elects to and does amend or restate its articles of incorporation in a form consonant with the provisions of ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950. Such other nonprofit corporations are hereby authorized to so amend or restate their articles of incorporation. [1959 c 580 §3, 1965 c 632 §3, 1969 c 139 §1]

(Filing Documents)

61.018 Filing requirements. (1) A document must satisfy the requirements of this section or any other section that modifies these requirements, to be entitled to filing by the Secretary of State.

(2) This chapter must require or permit filing the document with the Office of Secretary of State.

(3) The document shall contain the information required by this chapter. It may contain other information as well.

(4) The document must be legible.

(5) The document must be in the English language. The certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(6) The document must be executed:

(a) By the chairman of the board of directors of a domestic or foreign corporation, its president or another of its officers;

(b) If directors have not been selected or before the organizational meeting, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that receiver, trustee or fiduciary.

(7) The person executing the document shall state beneath or opposite the signature the name of the person and the capacity in which the person signs. The document may, but is not required to contain:

(a) The corporate seal;

(b) An attestation by the secretary or an assistant secretary; and

(c) An acknowledgment, verification or proof.

(8) If the Secretary of State has prescribed a mandatory form for the document under ORS 61.031, the document must be in or on the prescribed form.

(9) The document must be delivered to the Office of the Secretary of State accompanied by a true copy, except as provided in ORS 61.086, 61.690 and 61.805, and the required fees.

(10) Delivery of a document to the Office of Secretary of State is accomplished only when the document is actually received by the Office of Secretary of State. [1987 c 94 §27]

Note: 61 018 to 61 044 were added to and made a part of ORS chapter 61 but were not added to any smaller series therein by legislative action See Preface to Oregon Revised Statutes for further explanation.

61.020 [Repealed by 1959 c 580 §104]

61.021 Filing, service and copying fees. (1) The Secretary of State shall collect the following fees for the documents delivered for filing:

(a) Articles of incorporation, \$10.

(b) Application for reserved name, \$5.

(c) Application for registered name, \$200.

(d) Application of a foreign corporation for authority to transact business in this state, \$10.

(e) Annual report of a domestic corporation, \$5.

(f) Annual report of a foreign corporation, \$5.

(g) Application for certificate of existence or authorization, \$2.

(2) The Secretary of State shall collect a fee of \$2 each time process is served on the Secretary of State under this chapter.

(3) The Secretary of State by rule may establish fees, in addition to those provided for in subsections (1) and (2) of this section, for:

(a) Copying any public record maintained by the Office of Secretary of State and relating to a domestic or foreign corporation, and for certifying the copy.

(b) Certifying to other facts of record, other than a certificate of existence, pursuant to ORS 61.044. [1987 c 94 §29]

Note: See note under 61 018.

61.024 Effective time and date of document. (1) Except as provided in subsection (2) of this section and ORS 61.027, a document accepted for filing is effective on the date it is filed by the Secretary of State and at the time, if any, specified in the document as its effective time.

(2) If a document specifies a delayed effective time and date, the document becomes effective at the time and date specified. If a document specifies a delayed effective date but no time, the document becomes effective on that date. A delayed effective date for a document may not be later than the 90th day after the date it is filed. [1987 c.94 §30]

Note: See note under 61 018

61.027 Correcting filed document. (1) A domestic or foreign corporation may correct a document filed by the Secretary of State, other than an annual report, if the document contains an incorrect statement or was defectively executed, attested, sealed, verified or acknowledged.

(2) A domestic or foreign corporation shall correct a document by delivering articles of correction to the Office of Secretary of State. The articles shall include the following:

(a) A description of the document, including its filing date, or a copy of the document.

(b) The incorrect statement and the reason it is incorrect, or a description of the manner in which the execution, attestation, seal, verification or acknowledgment is defective.

(c) A correction of the incorrect statement or defective execution, attestation, seal, verification or acknowledgment.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed. [1987 c 94 §31]

Note: See note under 61 018

61.030 [Repealed by 1959 c 580 §104]

61.031 Forms. (1) Upon request, the Secretary of State shall furnish forms for:

(a) A foreign corporation's application for authority to transact business in this state;

(b) A foreign corporation's application for withdrawal; and

(c) An annual report.

(2) The Secretary of State may by rule require the use of these forms.

(3) Upon request, the Secretary of State shall furnish on request forms for other documents required or permitted to be filed by this chapter. Use of such forms is not required. [1987 c 94 §28]

Note: See note under 61.018

61.034 Filing duty of Secretary of State. (1) If a document delivered to the Office of Secretary of State for filing satisfies the requirements of ORS 61.018, the Secretary of State shall file it.

(2) The Secretary of State files a document by indicating thereon that it has been filed by the Secretary of State and the date of filing. After filing a document, except as provided in ORS 61.086, 61.690 and 61.805, the Secretary of State shall return the true copy to the domestic or foreign corporation or its representative.

(3) If the Secretary of State refuses to file a document the Secretary of State shall return it to the domestic or foreign corporation or its representative within 10 business days after the document was delivered together with a brief written explanation of the reason for the refusal.

(4) The Secretary of State's duty to file documents under this section is ministerial and is limited in scope of review as set out by rule of the Secretary of State. The Secretary of State is not required to verify or inquire into the legality or truth of any matter included in any document delivered to the Office of Secretary of State for filing. The Secretary of State's filing or refusing to file a document does not:

(a) Affect the validity or invalidity of the document in whole or part; or

(b) Relate to the correctness or incorrectness of information contained in the document.

(5) The Secretary of State's refusal to file a document does not create a presumption that the document is invalid or that information contained in the document is incorrect. [1987 c 94 §32]

Note: See note under 61 018.

61.037 Appeal from Secretary of State's refusal to file document. If the Secretary of State refuses to file a document delivered to the Office of Secretary of State for filing, the domestic or foreign corporation, in addition to any other legal remedy that may be available, shall have the right to appeal from such order pursuant to the provisions of ORS 183.480. [1987 c 94 §33]

Note: See note under 61 018

61.040 [Repealed by 1959 c 580 §104]

61.041 Evidentiary effect of copy of filed document. (1) A certificate attached to a copy of a document filed by the Secretary of State, bearing the Secretary of State's signature, which may be in facsimile, is conclusive evidence that the original document, or a facsimile thereof, is on file with the Office of Secretary of State.

(2) The provisions of ORS 56.110 apply to all documents filed pursuant to this chapter. [1987 c.94 §34]

Note: See note under 61.018

61.044 Certificate of existence or authorization. (1) Anyone may apply to the Secretary of State to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(2) A certificate of existence or authorization when issued means that:

(a) The domestic corporation's corporate name or the foreign corporation's corporate name is registered in this state;

(b) The domestic corporation is duly incorporated under the law of this state, or the foreign corporation is authorized to transact business in this state;

(c) All fees payable to the Secretary of State under this chapter have been paid, if nonpayment affects the existence or authorization of the domestic or foreign corporation;

(d) An annual report required by ORS 61.805 has been filed by the Secretary of State within the preceding 14 months; and

(e) Articles of dissolution or an application for withdrawal have not been filed by the Secretary of State.

(3) A person may apply to the Secretary of State to issue a certificate covering any fact of record. [1987 c 94 §35]

Note: See note under 61.018

61.050 [Repealed by 1959 c.580 §104]

SUBSTANTIVE PROVISIONS

61.051 Purposes for which corporations may be organized. Corporations may be organized under ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950 for any one or more lawful purposes none of which is for profit. [1959 c 580 §4]

61.055 Corporation sole. (1) Any person may, in conformity with the constitution, canons, rules, regulations and disciplines of any church or religious denomination, form a corporation hereunder to be a corporation sole. Such corporation will differ from other corporations organized hereunder only in that it shall have no board of directors, need not have officers and shall be managed by the individual constituting the corporation, who shall be the incorporator or the successor of the incorporator.

(2) The name of such corporation shall be the name of the office within the church or religious denomination held by the incorporator, and shall be followed by the words "and successors, a corporation sole."

(3) All of the provisions of ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950 shall apply to such corporation except in so far as they may be inconsistent with the absence of several directors. The individual constituting the corporation from time to time shall be deemed to constitute the board of directors for purposes of interpretation and application of the provisions of ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950. If the corporation has no officers, such individual may perform any act, including, but not limited to, the execution of any instrument, as required under ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950 or otherwise, in the same manner and with the same effect as though such act were performed by one or more officers of the corporation. [1959 c 580 §5]

61.060 [Repealed by 1959 c 580 §104]

61.061 General powers. Each corporation shall have power:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

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

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(6) To lend money to its employes other than its officers and directors.

(7) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals, or direct or indirect obligations of the United States, or any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

(8) To make contracts 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, franchises and income.

(9) To lend money for its corporate purposes, 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 its business, carry on its operations, and have offices and exercise the powers granted by ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950 in any state, territory, district, or possession of the United States, or in any foreign country.

(11) To elect or appoint officers and agents of the corporation, define their duties, fix their compensation and pay pensions and establish pension plans and pension trusts for its officers or employes.

(12) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.

(13) Unless otherwise provided in the articles of incorporation, to make donations for the pub-

lic welfare or for charitable, religious, eleemosynary, benevolent, scientific or educational purposes; and in time of war to make donations in aid of war activities.

(14) To cease its corporate activities and surrender its corporate franchise.

(15) To have and exercise all powers necessary or convenient to effect any of or all the purposes for which the corporation is organized. [1959 c 580 §6, 1963 c.479 §33; 1975 c 490 §38]

61.065 When ultra vires may be asserted. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation 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 conveyance or transfer, but such lack of capacity or power may be asserted:

(1) In a proceeding by a member or a director against the corporation to enjoin the doing or continuation of unauthorized acts, or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding 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 the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be considered by the court as a loss or damage sustained.

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the officers or directors or former officers or directors of the corporation for exceeding their authority.

(3) In a proceeding by the Attorney General to enjoin the corporation from performing unauthorized acts. [1959 c.580 §7]

61.070 [Repealed by 1959 c.580 §104]

61.071 [1959 c.580 §8; 1963 c.492 §24; 1963 c.551 §26; 1969 c.140 §4, 1971 c.318 §11; repealed by 1985 c.728 §45 (61.072 enacted in lieu of 61.071)]

61.072 Corporate name. ORS 60.094 (2) to (7), relating to corporate names, are applicable to nonprofit corporations. [1985 c.728 §46; 1987 c 94 §37]

61.075 [1955 c 200 §4; repealed by 1959 c.580 §104]

61.076 Reserved name. ORS 60.097 relating to the reservation of a corporate name is applicable to nonprofit corporations. [1959 c 580 §9; 1987 c 94 §38]

61.080 [Repealed by 1959 c 580 §104]

61.081 Registered name. ORS 60.101 relating to the registration of a corporate name by a foreign corporation is applicable to nonprofit corporations. [1959 c.580 §10; 1987 c 94 §39]

61.085 [1955 c.319 §1; repealed by 1959 c 580 §104]

61.086 Registered office and registered agent; service of process on corporation. (1) Each corporation shall have and continuously maintain in this state:

(a) A registered office which may be, but need not be, the same as its place of business.

(b) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this state, having a business office identical with such registered office.

(2) A corporation may change its registered office or registered agent in accordance with the procedure set forth in ORS 60.114.

(3) A person who has been designated by a corporation as its registered agent may resign in accordance with the procedure set forth in ORS 60.117.

(4) A registered agent appointed by a corporation is an agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

(5) The provisions of ORS 60.121 relating to service of process on a corporation are applicable to nonprofit corporations. [1959 c.580 §11, 1987 c 94 §40]

61.090 [Repealed by 1959 c.580 §104]

61.091 Members. A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws, provided, that voting rights may be limited, enlarged or denied only to the extent specified in the articles of incorporation. If the corporation has no members, that fact shall be set forth in the articles of incorporation or the bylaws. A corporation may issue

certificates evidencing membership therein. [1959 c.580 §12; 1961 c.141 §1]

61.095 Bylaws. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation. [1959 c.580 §13]

61.100 [Repealed by 1959 c.580 §104]

61.101 Meetings of members. (1) Meetings of members may be held either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in this state.

(2) An annual meeting of the members shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation. If the annual meeting is not held at the designated time, the president or the board of directors may call the annual meeting at a time fixed by them not more than 60 days after such designated time by proper notice designating the meeting as the annual meeting. If the annual meeting is not held at the designated time or during the 60-day period thereafter, the annual meeting may be called by members having one-twentieth of the votes entitled to be cast at the meeting. In such event, notice shall be given not more than 15 days after the expiration of such 60-day period. Such notice shall fix the time of meeting at the earliest date permissible under the applicable notice requirements.

(3) Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such officers or persons or number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting. [1959 c.580 §14; 1963 c.479 §34]

61.105 Notice. (1) Except as provided in subsections (2) and (3) of this section, written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is

called, shall be delivered not less than seven nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, with postage fully prepaid thereon, addressed to the member at the most recent address of the member as it appears on the records of the corporation.

(2) A corporation all or a part of whose activities consist of soliciting funds from the public for charitable, religious, eleemosynary, benevolent, scientific, educational or similar purposes, may provide in its articles of incorporation or bylaws that all or a certain class or classes of its contributors shall be voting members with limited right to notice. Such a corporation may have, but need not have, another class or other classes of voting members with full right to notice as provided in subsection (1) of this section. Voting members with limited right to notice shall be given notice of the place, day and hour of the meeting by publication three times at one-week intervals, the last publication to be not less than seven days before the meeting, in a newspaper of general circulation in the county in which the principal office of the corporation is located, and such further notice, if any, as the articles of incorporation or bylaws may prescribe.

(3) A corporation organized for educational, scientific or similar purposes may provide in its articles of incorporation or bylaws, if a newspaper is published for general circulation among its members, that all or a certain class or classes of members shall be voting members with limited right to notice. Such a corporation may have, but need not have, another class or other classes of voting members with full right to notice as provided in subsection (1) of this section. Voting members with limited right to notice shall be given notice in the newspaper of general circulation among its members in the manner provided in subsection (2) of this section. Further notice, if any, may be provided as prescribed in the articles of incorporation or bylaws. [1959 c.580 §15; 1961 c.141 §2; 1983 c.717 §39]

61.110 [Repealed by 1959 c.580 §104]

61.111 Voting. (1) The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote.

(2) A member may vote in person or, unless the articles of incorporation or the bylaws other-

wise provide, may vote by proxy executed in writing by the member or by the duly authorized attorney-in-fact of the member. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

(3) The articles of incorporation may provide that in all elections for directors every member entitled to vote shall have the right to cumulate the vote of the member and to give one candidate a number of votes equal to the vote of the member multiplied by the number of directors to be elected, or by distributing such votes on the same principle among any number of such candidates. [1959 c.580 §16]

61.115 Quorum. (1) The vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950, the articles of incorporation or the bylaws.

(2) Those members present at any annual or special meeting of members constitute a quorum at the meeting, unless the bylaws of the corporation provide that a greater number constitutes a quorum. [1959 c 580 §17]

61.120 [Repealed by 1959 c.580 §104]

61.121 Board of directors. (1) Each corporation shall have a board of directors.

(2) All corporate powers shall be executed by or under the authority of, and the business and affairs of a corporation managed under the direction of, its board of directors, subject to any limitations set forth in the articles of incorporation.

(3) A corporation having a corporation as its only member may prescribe in its articles of incorporation duties which will be performed by the sole corporate member.

(4) Directors need not be residents of this state or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors. [1959 c.580 §18; 1987 c 287 §1]

61.125 Number and election of directors. (1) The number of directors shall be fixed by the bylaws, except as to the number of the first board of directors, which number shall be fixed by the articles of incorporation. The bylaws may

authorize the number of directors to vary between a specified maximum and minimum number, and in such case the exact number within such maximum and minimum shall be fixed by resolution of the directors from time to time. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw, or an authorized resolution of the directors fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

(2) The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation. Thereafter, directors shall be elected or appointed in the manner and for the terms set forth in the articles of incorporation, provided that the bylaws may permit such elections to be conducted by mail. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

(3) Except as provided in subsection (5) of this section, directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which elected or appointed and until a successor shall have been elected or appointed to take office.

(4) A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation.

(5) If the corporation has cumulative voting:

(a) Classification of directors may be provided only if authorized by the articles of incorporation, and

(b) No class shall consist of fewer than three members. [1959 c 580 §19; 1963 c 479 §35, 1965 c.632 §4; 1985 c.728 §47]

61.127 Removal of directors. (1) Except as provided in subsections (2) and (3) of this section, all or any number of the directors may be removed, with or without cause, at a meeting called expressly for that purpose, by a vote of a majority of the members entitled to vote at an election of directors.

(2) If the corporation has cumulative voting and fewer than all the directors are removed, no

one of the directors may be removed if the votes cast against the removal of the director would be sufficient to elect the director if then cumulatively voted at an election of the entire board of directors or, if there be classes of directors, at any election of the class of directors of which the director is a part.

(3) Only the members of a class entitled to elect a director may vote on the removal of a director elected by such class. [1963 c 479 §40]

61.130 [Repealed by 1959 c 580 §104]

61.131 Vacancies in board of directors.

Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control. A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of a predecessor in office. [1959 c.580 §20]

61.135 Quorum of directors. A majority of the number of directors fixed by the bylaws or by resolution of the directors pursuant to ORS 61.125 (1), or in the absence of a bylaw or an authorized resolution of the directors fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the bylaws; but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950, the articles of incorporation or the bylaws. [1959 c 580 §21, 1965 c 632 §5]

61.140 [Repealed by 1959 c 580 §104]

61.141 Committees. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees each of which shall consist of two or more directors, which committees, to the extent provided in such resolution, in the articles of incorporation or in the bylaws of the corporation, shall have and exercise the authority of the board of directors in the management of the corporation; provided, how-

ever, that no such committee shall have the authority of the board of directors in reference to amending, altering or repealing the bylaws; electing, appointing or removing any member of any such committee or any director or officer of the corporation; amending the articles of incorporation; adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease, exchange or mortgage of all or substantially all of the property and assets of the corporation; authorizing the voluntary dissolution of the corporation or revoking proceedings therefor; adopting a plan for the distribution of the assets of the corporation; or amending, altering or repealing any resolution of the board of directors which by its terms provides that it shall not be amended, altered or repealed by such committee. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director of any responsibility imposed upon the board or individual director by law. [1959 c.580 §22]

61.145 Place and notice of directors' meetings; means of communication. (1)

Meetings of the board of directors, regular or special, may be held either within or without this state, and upon such notice as the bylaws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting unless required by the bylaws.

(2) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through, use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. [1959 c.580 §23; 1987 c 94 §125a]

61.150 [1953 c.549 §141; repealed by 1959 c 580 §104]

61.151 Officers. (1) The officers of a corporation, other than a corporation sole, shall consist of a president and a secretary, and such other officers and assistant officers as may be deemed necessary. Each officer shall be elected or appointed at such time and in such manner and

for such terms not exceeding three years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. Any two or more offices may be held by the same person.

(2) The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

(3) The officers of a corporation may be designated by such other titles in lieu of the above as may be provided in the articles of incorporation or the bylaws. [1959 c 580 §24, 1963 c 492 §25; 1985 c.728 §48]

61.155 Removal of officers. Any officer elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed. [1959 c 580 §25]

61.160 [1953 c 680 §§1, 2, repealed by 1957 c.347 §1]

61.161 Books and records; inspection.

(1) Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors. It shall keep at its registered office or principal office in this state a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member, or the agent or attorney of any member, for any proper purpose at any reasonable time.

(2) In any action or proceeding to enforce the rights of members provided in this section, if the member prevails in the action or proceeding, there shall be taxed and allowed to such member, at trial and on appeal, a reasonable amount to be fixed by the court as attorney fees for the prosecution of the action or proceeding. [1959 c 580 §26, 1981 c 897 §14]

61.165 Shares of stock and dividends prohibited. A corporation shall not have or issue shares of stock. No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors or officers. A corporation may pay compensation in a reasonable amount to its members, directors or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as per-

mitted by ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income. [1959 c.580 §27]

61.170 Loans to directors and officers prohibited. (1) No loans shall be made by a corporation to its directors or officers. The directors of a corporation who vote for or assent to the making of a loan to a director or officer of the corporation, and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

(2) Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from the other directors who voted for the action upon which the claim is asserted. To the extent that any director is required to pay such claim the director shall be subrogated to the rights of the corporation against the debtor on the loan. [1959 c 580 §28]

61.205 Indemnification of directors, officers, employes or agents against certain expenses, judgments, fines or settlements; conditions. (1) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employe or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employe or agent of another corporation, against expenses, including attorney fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct of the person was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct of the person was unlawful.

(2) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employe or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employe or agent of another corporation, against expenses, including attorney fees, actually and reasonably incurred by the person in connection with the defense or settlement of the action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which the person shall have been adjudged to be liable unless and only to the extent that the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnity for the expenses which the court shall deem proper.

(3) To the extent that a director, officer, employe or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (1) and (2) of this section, or in defense of any claim, issue or matter therein, the director, officer, employe or agent shall be indemnified against expenses, including attorney fees, actually and reasonably incurred by the director, officer, employe or agent in connection therewith. [1975 c 490 §40; 1987 c 774 §17]

Note: 61.205 and 61.215 were enacted into law by the Legislative Assembly and were added to 61.051 to 61.170 by legislative action. However, they were not added to 61.131 to 61.370 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

61.210 [Repealed by 1959 c 580 §104]

61.215 Methods of indemnification; not exclusive of other rights; insurance against liability. (1) Any indemnification under ORS 61.205 (1) and (2), unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employe or agent is proper in the circumstances because the director, officer, employe or agent has met the applicable standard of conduct set forth in ORS 61.205 (1) and (2). The determination shall be made:

(a) By the board of directors by a majority vote of a quorum consisting of directors who were not parties to the action, suit, or proceeding;

(b) If such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion; or

(c) By the members.

(2) Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of the action, suit or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employe or agent to repay such amount if it shall ultimately be determined that the director, officer, employe or agent is not entitled to be indemnified by the corporation as authorized in this section.

(3) The indemnification and advancement of expenses provided by, or granted pursuant to, subsections (1), (2), (4) and (5) of this section and ORS 61.205 shall not be deemed exclusive of any other rights to which those indemnified or advanced expenses may be entitled under any bylaw, agreement, vote of members or disinterested directors or otherwise, both as to action in official capacity and as to action in another capacity while holding the office.

(4) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employe or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employe or agent of another corporation, against any liability asserted against the director, officer, employe or agent and incurred by the director, officer, employe or agent in any such capacity or arising out of status as such, whether or not the corporation would have the power to indemnify the director, officer, employe or agent against the liability under the provisions of this section and ORS 61.205.

(5) The indemnification and advancement of expenses provided by, or granted pursuant to, this section, unless otherwise provided when authorized or ratified, shall continue as to a person who has ceased to be a director, officer, employe or agent and shall inure to the benefit of the estate or conservator of such a person. [1975 c 490 §41, 1987 c.94 §125b, 1987 c 774 §18]

Note: See note under 61.205.

Note: Section 21, chapter 774, Oregon Laws 1987, provides:

Sec. 21. ORS 61.205 and 61.215, as amended by sections 17 and 18 of this Act, shall apply to all indemnifications made by a corporation after the operative date of those sections, and all other actions regarding indemnifications taken by or on behalf of a corporation or by a court after the operative date of those sections, including all indemnifica-

tions made and other actions taken after the operative date of those sections with respect to claims that arose or matters that occurred prior to the operative date of those sections or pursuant to any provisions of any articles of incorporation, bylaws, resolutions or agreements in effect prior to the operative date of those sections.

61.218 Liability of director for negligent performance of duties. (1) The civil liability of a qualified director for the negligent performance of the director's duties shall be limited to acts of gross negligence and intentional acts.

(2) This section does not affect the civil liability of the entity which a qualified director serves.

(3) For the purposes of this section, "qualified director" means a person who serves without compensation for personal services as:

(a) A member of a board or commission of the state or a political subdivision for the purpose of setting policy and controlling or otherwise overseeing the activities or functional responsibilities of the board or commission but, notwithstanding ORS 30.265 (2), the entity is not thereby rendered immune from liability;

(b) An officer, director or member of an executive board for the purpose of setting policy and controlling or otherwise overseeing the activities or functional responsibilities of a nonprofit corporation, unincorporated association or nonprofit cooperative corporation that has as its primary purpose:

- (A) Religion;
- (B) Charity;
- (C) Benevolence;
- (D) Providing goods or services at no charge to the general public;
- (E) Education;
- (F) Scientific activity;
- (G) Medical or hospital services at reduced costs; or

(H) Engaging in activities of the nature specified in section 501 of the Internal Revenue Code of 1954, as amended; or

(c) A director for the purpose of setting policy and controlling or otherwise overseeing the activities or functional responsibilities of an organization which acts as an advocate for its members and which has as its members individuals or organizations that are:

- (A) Members of a particular trade or industry; or
- (B) Members of the business community of a particular municipality or area of the state.

(4) An otherwise qualified director shall not be considered to be compensated for personal services if the director receives payment only for actual expenses incurred in attending meetings or performing a director's duties or receives a stipend which is paid only to compensate the director for average expenses incurred over the course of a year. [1987 c.774 §19]

Note: 61.218 was added to and made a part of ORS chapter 61 but was not added to any smaller series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation

61.220 [Amended by 1955 c.199 §1, repealed by 1959 c.580 §104]

61.230 [Repealed by 1959 c.580 §104]

FORMATION OF CORPORATIONS

61.305 Incorporators. One or more individuals 18 years of age or older, a domestic or foreign corporation, a partnership or an association may act as incorporators of a nonprofit corporation by delivering articles of incorporation to the Office of Secretary of State for filing. [1959 c.580 §29, 1963 c.492 §26; 1975 c.161 §1, 1981 c.633 §53; 1987 c.94 §41]

61.310 [Repealed by 1959 c.580 §104]

61.311 Articles of incorporation. (1) The articles of incorporation shall set forth:

(a) The name of the corporation.

(b) The purpose or purposes for which the corporation is organized. It shall be sufficient to state, either alone or with other purposes, that the purpose of the corporation is to engage in any lawful activity for which corporations may be organized under this chapter, and by such statement, all lawful activities shall be within the purposes of the corporation, except for express limitations, if any.

(c) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation.

(d) The street address of the corporation's initial registered office and the name of its initial registered agent who shall be amenable to service of process at the address.

(e) A mailing address to which the Secretary of State may mail notices as required by this chapter.

(f) The number of directors constituting the initial board of directors, and the names and addresses of the persons who are to serve as the initial directors.

(g) The name and address of each incorporator.

(h) The manner of electing or appointing subsequent directors and their terms of office.

(2) Duration shall be perpetual unless the articles of incorporation expressly limit the period of duration.

(3) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in ORS 61.061.

(4) The Secretary of State by rule may require additional identifying information. [1959 c 580 §30, 1963 c 492 §27, 1983 c 717 §22, 1985 c 728 §49, 1987 c.94 §126]

61.315 [1959 c.580 §31, 1981 c 633 §54, 1985 c 728 §50; repealed by 1987 c 94 §174]

61.320 [Repealed by 1959 c.580 §104]

61.321 Effect of issuance of certificate of incorporation. Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950, except as against the state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation. [1959 c 580 §32]

61.325 Organizational meeting of directors. After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of the incorporators, for the purpose of adopting bylaws, electing officers and transacting of such other business as may come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting. [1959 c.580 §33]

61.330 [Repealed by 1959 c.580 §104]

61.340 [Repealed by 1959 c 580 §104]

61.350 [Repealed by 1959 c 580 §104]

AMENDMENT OF ARTICLES

61.355 Right to amend articles of incorporation. A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under

ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950. [1959 c 580 §34]

61.360 [Repealed by 1959 c.580 §104]

61.361 Procedure to amend articles of incorporation. (1) Amendments to the articles of incorporation shall be made in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at an annual or a special meeting of members having voting rights. Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950 for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(b) Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(2) Any number of amendments may be submitted and voted upon at any one meeting. [1959 c 580 §35]

61.370 Articles of amendment. The articles of amendment shall set forth:

(1) The name of the corporation.

(2) The amendment so adopted.

(3) Where there are members having voting rights, a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(4) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office. [1959 c.580 §36, 1987 c.94 §42]

61.373 Amendment of articles following reorganization. (1) Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of such corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended; in the manner provided in this section, in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

(2) In particular and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

(a) Change the corporate name, period of duration or corporate purposes of the corporation.

(b) Repeal, alter or amend the bylaws of the corporation.

(c) Constitute or reconstitute and classify or reclassify the board of directors of the corporation, and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

(3) Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

(a) Articles of amendment approved by decree or order of such court shall be signed and verified by such person or persons as the court shall designate or appoint for the purpose, and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered and a statement that such decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.

(b) One original and one true copy of the articles of amendment shall be submitted for filing to the Office of Secretary of State. If the Secretary of State finds that the articles of amendment conform to this chapter, the Secretary of State, when all fees and charges have been paid, shall file the articles of amendment and return the copy marked "filed" to the sender.

(4) Upon the filing of the articles of amendment by the Secretary of State, the amendment shall become effective, and the articles of incorporation shall be deemed to be amended accordingly, without any action thereon by the directors or members of the corporation and with the same effect as though the amendments had been adopted by unanimous action of the directors and members of the corporation. [1963 c 479 §39; 1981 c 633 §55; 1985 c 728 §51]

61.375 [1959 c 580 §37, 1981 c.633 §56, 1985 c 728 §52, repealed by 1987 c 94 §174]

61.380 Effect of articles of amendment. No amendment of articles of incorporation shall affect any existing cause of action in favor of or against such corporation, or any pending action to which such corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no action brought by or against such corporation under its former name shall abate for that reason. [1959 c.580 §39, 1985 c.728 §53; 1987 c 94 §43]

61.385 Restated articles of incorporation. (1) A corporation may, by action taken in the same manner as required for amendment of articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of amending the existing articles of incorporation to conform to the restated articles of incorporation, without further action of the board of directors or members. Restated articles of incorporation shall contain a statement that they supersede the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements which the Oregon Nonprofit Corporation Law requires in original articles of incorporation except that no statement need be made with respect to the number, names and addresses of directors constituting the initial board of directors or the names and addresses of the incorporators, or the initial or present registered office or agent.

(2) Restated articles of incorporation, when filed, shall supersede the theretofore existing articles of incorporation and amendments thereto.

(3) The restated articles of incorporation, when filed, shall be accompanied by a statement described in this subsection, and a true copy of the statement. The statement shall set forth the following:

(a) The name of the corporation.

(b) Where there are members having voting rights, a statement setting forth the date of the meeting of members at which the restated articles of incorporation were adopted, that a quorum was present at such meeting and that the restated articles of incorporation received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or a statement that the restated articles of incorporation were adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(c) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the restated articles of incorporation were adopted and a statement of the fact that the restated articles of incorporation received the vote of a majority of the directors in office. [1959 c.580 §38; 1961 c 144 §1, 1963 c 492 §28, 1969 c.364 §6, 1977 c 78 §3, 1981 c 633 §57, 1987 c 94 §44]

61.410 [Repealed by 1959 c 580 §104]

61.420 [Amended by 1955 c.197 §1, repealed by 1959 c 580 §104]

61.430 [Repealed by 1959 c 580 §104]

61.440 [Repealed by 1959 c 580 §104]

61.450 [Repealed by 1959 c 580 §104]

MERGER AND CONSOLIDATION

61.455 Procedure for merger. (1) Any two or more domestic corporations, or any one or more foreign corporations and one or more domestic corporations may merge into one of such corporations, pursuant to a plan of merger approved in the manner prescribed by ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950, if such merger is permitted by the laws of the state under which each such corporation is organized.

(2) Each corporation shall adopt a plan of merger setting forth:

(a) The names of the corporations proposing to merge and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

(b) The terms and conditions of the proposed merger.

(c) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

(d) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

(3) At any time prior to the filing of the articles of merger, the merger may be abandoned pursuant to the provisions thereof, if any, set forth in the plan of merger. [1959 c 580 §40; 1963 c 479 §36]

61.460 [Repealed by 1959 c 580 §104]

61.461 Procedure for consolidation. (1) Any two or more domestic corporations, or any one or more foreign corporations and one or more domestic corporations, may consolidate into a new corporation to be governed by the laws of a state under which one of such corporations was organized, pursuant to a plan of consolidation approved in the manner prescribed by ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950, if such consolidation is permitted by the laws of the state under which each such corporation is organized.

(2) Each corporation shall adopt a plan of consolidation setting forth:

(a) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

(b) The terms and conditions of the proposed consolidation.

(c) A designation of the state under the laws of which the new corporation is being organized and all of the statements required to be set forth in articles of incorporation for corporations organized under the applicable laws of such state.

(d) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

(3) At any time prior to the filing of the articles of consolidation, the consolidation may be abandoned pursuant to the provisions thereof, if any, set forth in the plan of consolidation. [1959 c 580 §41, 1963 c 479 §37]

61.465 Adoption of merger or consolidation. (1) A plan of merger or consolidation shall be adopted by each domestic corporation in the following manner:

(a) Where the members of any merging or consolidating corporation have voting rights, the board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at an annual or a special meeting of members having voting rights. Written or printed notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner

provided in ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950 for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at each such meeting or represented by proxy are entitled to cast.

(b) Where any merging or consolidating corporation has no members, or no members having voting rights, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

(2) The plan of merger or consolidation shall be adopted by each foreign corporation in the manner provided by the applicable laws of the state under which it is organized.

(3) After such adoption, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation or pursuant to mutual agreement evidenced by a resolution of recession adopted in the manner provided in this section for the adoption of a plan of merger or consolidation. [1959 c.580 §42]

61.470 [Repealed by 1959 c 580 §104]

61.471 Articles of merger or consolidation. (1) Upon such adoption, articles of merger or articles of consolidation shall set forth:

(a) The plan of merger or the plan of consolidation;

(b) Where the members of any merging or consolidating domestic corporation have voting rights, then as to each such corporation a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or a statement that such plan was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(c) Where any merging or consolidating domestic corporation has no members, or no members having voting rights, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office;

(d) Where any foreign corporation is a party to the merger or consolidation, then as to each such foreign corporation a statement that the

plan was adopted in accordance with the applicable provisions of the laws of the state under which it was organized; and

(e) If the surviving or new corporation is to be a foreign corporation, an irrevocable designation of the Secretary of State as its agent to accept service of process in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation.

(2) If the surviving or new corporation is to be governed by the laws of any state other than this state, and if it is to transact business in this state, it shall comply with the provisions of this chapter with respect to foreign corporations. [1959 c 580 §43, 1981 c 633 §58, 1985 c 728 §54, 1987 c 94 §45]

61.475 [1959, c 580 §44, 1985 c 728 §55; repealed by 1987 c.94 §174]

61.480 [Repealed by 1959 c 580 §104]

61.481 Effect of merger or consolidation. (1) When such merger or consolidation has been effected, if the surviving or new corporation is to be governed by the laws of this state:

(a) The several corporations parties to the plan of merger or consolidation shall be a single corporation which shall be the surviving corporation designated in the plan of merger, or the new corporation provided for in the plan of consolidation, as the case may be.

(b) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(c) Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950.

(d) Such surviving or new corporation shall possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(e) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated. Any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, and such surviving or new corporation may be substituted in place of the merged or consolidated corporation. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(f) The articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger. The statements set forth in articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950 shall be deemed to be the articles of incorporation of the new corporation.

(2) If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be as in this section set forth, except insofar as the laws of such other state provide otherwise. [1959 c 580 §45]

61.490 [Repealed by 1959 c 580 §104]

61.493 [1963 c 492 §40, repealed by 1987 c.94 §174]

61.500 [Repealed by 1959 c 580 §104]

DISPOSITION OF ASSETS

61.505 Sale, lease, exchange or mortgage of assets. A sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and 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 money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge or other disposition and directing that it be submitted to a vote at an annual or a special meeting of members having voting rights. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially

all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, within the time and in the manner provided by ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950 for the giving of notice of meetings of members. At such meeting the members may authorize such sale, lease, exchange, mortgage, pledge or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast. After such authorization by a vote of members, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange, mortgage, pledge or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

(2) Where there are no members, or no members having voting rights, a sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office. [1959 c 580 §46]

61.510 [Repealed by 1959 c 580 §104]

61.520 [Repealed by 1959 c 580 §104]

DISSOLUTION

61.525 Voluntary dissolution. (1) A corporation may dissolve and wind up its affairs in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at an annual or a special meeting of members having voting rights. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950 for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(b) Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

(2) Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation shall cease to transact business except in so far as may be necessary for the winding up thereof, shall cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950. [1959 c.580 §47]

61.530 Distribution of assets. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(1) All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

(2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;

(3) Assets held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, scientific, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950;

(4) Assets held by any nonprofit corporation organized or existing solely for the purpose of owning and operating a cemetery may, upon dissolution, be transferred and conveyed by gift to a cemetery district;

(5) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;

(6) Any remaining assets may be distributed to such persons, societies, organizations or

domestic or foreign corporations, whether for profit or not for profit, as may be specified in a plan of distribution adopted as provided in ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950; but any such remaining assets which are held by corporations organized for charitable, religious, eleemosynary, benevolent, scientific, educational or similar purposes shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation. [1959 c.580 §48]

61.535 Plan of distribution. A plan providing for the distribution of assets, not inconsistent with the provisions of ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950 requires a plan of distribution, in the following manner:

(1) When there are members having voting rights, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at an annual or a special meeting of members having voting rights. Written or printed notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950 for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving a vote of a majority of the directors in office. [1959 c.580 §49]

61.540 Revocation of voluntary dissolution proceedings. (1) A corporation may, at any time prior to the filing of articles of dissolution by the Secretary of State, revoke the action taken to dissolve the corporation, in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a

vote at an annual or a special meeting of members having voting rights. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950 for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members present at such meetings or represented by proxy are entitled to cast.

(b) Where there are no members, or no members having voting rights, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(2) Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation may thereupon again transact business. [1959 c 580 §50, 1985 c 728 §56]

61.545 Articles of dissolution. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation shall have been paid and discharged or adequate provisions shall have been made therefor, or all of the assets of the corporation have been distributed to its creditors for application to the outstanding debts, obligations and liabilities of the corporation to the fullest extent possible, and all of the remaining property and assets of the corporation, if any, shall have been transferred, conveyed or distributed in accordance with the provisions of this chapter, articles of dissolution shall set forth:

(1) The name of the corporation.

(2) Where there are members having voting rights, a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(3) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was

adopted and a statement of the fact that such resolution received the vote of a majority of the directors in office. In such event, the articles of dissolution may be executed by a majority of the directors.

(4) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor, or that all of the assets of the corporation have been distributed to its creditors for application to the outstanding debts, obligations and liabilities of the corporation to the fullest extent possible or that no property remained for that purpose.

(5) That all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this chapter.

(6) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

(7) The names and respective addresses, including street and number of the corporation's directors as of the date of execution of the articles of dissolution or if there be no directors at such time, then of its last acting board of directors. [1959 c.580 §51; 1965 c.631 §16, 1969 c.364 §7; 1981 c.633 §59; 1987 c.94 §46]

61.550 Effect of filing articles of dissolution. Upon the filing of articles of dissolution, the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in this chapter. [1959 c 580 §52, 1981 c.633 §60; 1985 c.728 §57; 1987 c 94 §47]

61.555 [1959 c.580 §53, repealed by 1963 c 492 §29 (61 556 enacted in lieu of 61.555)]

61.556 Administrative dissolution. ORS 60.647 to 60.657, relating to dissolution, apply to nonprofit corporations. In addition to the provisions of ORS 60.647 to 60.657, it shall be cause for dissolution by a decree of the circuit court in an action filed by the Attorney General when it is established that the corporation has fraudulently solicited money or has fraudulently used the money solicited. [1963 c 492 §30 (enacted in lieu of 61 555), 1965 c.631 §17, 1981 c.633 §61, 1983 c 717 §38; 1985 c.351 §13, 1985 c 728 §103, 1987 c.94 §48]

61.560 [1959 c 580 §54, repealed by 1987 c.94 §174]

61.565 Jurisdiction of court to dissolve corporation and liquidate assets and affairs of corporation. (1) The circuit courts shall have full power to dissolve a corporation and liquidate the assets and business thereof:

(a) In an action by a member or director when it is made to appear:

(A) That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or

(B) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(C) That the corporate assets are being misapplied or wasted; or

(D) That the corporation is unable to carry out its purposes.

(b) Upon application by a corporation to have its dissolution continued under the supervision of the court.

(c) When an action has been filed by the Attorney General to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.

(2) Venue for a proceeding by the Attorney General to dissolve a corporation lies in Marion County. Venue for a proceeding brought by any other party named in this section lies in the county where a corporation's principal office is located or, if the principal office is not in this state, where its registered office is or was last located.

(3) It shall not be necessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally.

(4) A court in a proceeding under subsection (1) of this section may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located and carry on the business of the corporation until a full hearing can be held. [1959 c 580 §55, 1987 c 94 §49]

61.568 Judicial authority to appoint receivers and custodians. ORS 60.667, relating to judicial authority to appoint receivers and custodians, is applicable to nonprofit corporations. [1987 c.94 §50]

Note: 61.568 was added to and made a part of ORS chapter 61 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation

61.570 [1959 c 580 §56, repealed by 1987 c.94 §174]

61.575 [1959 c.580 §57, repealed by 1987 c 94 §174]

61.580 [Amended by 1957 c 312 §1, repealed by 1959 c 580 §104]

61.581 [1959 c 580 §58; repealed by 1987 c 94 §174]

61.585 [1959 c 580 §59, repealed by 1987 c.94 §174]

61.590 [Amended by 1957 c.312 §2, repealed by 1959 c 580 §104]

61.591 Decree of dissolution. ORS 60.671, relating to judicial decrees of dissolution, is applicable to nonprofit corporations. [1959 c.580 §60; 1987 c 94 §51]

61.595 Deposit with Division of State Lands. Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any person who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash, deposited with the Division of State Lands and administered as provided in ORS 60.674. [1959 c.580 §61; 1987 c 94 §52]

61.600 Effect of dissolution. ORS 60.637, relating to the effect of dissolution, is applicable to nonprofit corporations except that for the purpose of this section the word "shareholders" as used in that section means "members." [1959 c 580 §62; 1987 c 94 §53]

FOREIGN CORPORATIONS

61.655 Admission of foreign corporation. (1) No foreign corporation shall have the right to transact business in this state until it has been authorized to do so by the Secretary of State. No foreign corporation shall be authorized under this chapter to transact in this state any business which a corporation organized under this chapter is not permitted to transact. A foreign corporation shall not be denied authority to transact business in this state by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this chapter shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

(2) Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:

(a) Maintaining or defending any action or suit or any administrative or arbitration proceed-

ing, or effecting the settlement thereof or the settlement of claims or disputes.

(b) Holding meetings of its directors or members or carrying on other activities concerning its internal affairs.

(c) Maintaining bank accounts.

(d) Creating evidences of debt, mortgages or liens on real or personal property.

(e) Securing or collecting debts due to it or enforcing any rights in property securing the same.

(f) Soliciting funds. [1959 c 580 §63, 1987 c.94 §54]

61.660 Powers of foreign corporation. ORS 60.714, relating to powers of foreign corporations, applies to nonprofit corporations, except that for the purpose of this section the reference in ORS 60.714 to "this chapter" means ORS chapter 61. [1959 c 580 §64, 1985 c 728 §58; 1987 c 94 §55]

61.665 [1959 c.580 §65, 1963 c 492 §31; 1963 c 551 §27, 1969 c.140 §5, repealed by 1985 c.728 §59 (61.666 enacted in lieu of 61 665)]

61.666 Corporate name of foreign corporation. ORS 60.717 (1), (3) and (4), relating to corporate names of foreign corporations, apply to nonprofit corporations. [1985 c 728 §60, 1987 c 94 §56]

61.670 [1959 c 580 §66, repealed by 1985 c 728 §110]

61.675 [1959 c.580 §67, 1963 c 492 §32, repealed by 1985 c 728 §61 (61 676 enacted in lieu of 61 675)]

61.676 Application for authority to transact business. ORS 60.707, relating to application for authority to transact business, is applicable to nonprofit corporations. [1985 c 728 §62; 1987 c 94 §57]

61.680 [1959 c 580 §68, repealed by 1987 c 94 §174]

61.685 [1959 c 580 §69, repealed by 1987 c.94 §174]

61.690 Registered office and registered agent of foreign corporation. Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

(1) A registered office which may be, but need not be, the same as its principal office.

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business in this state, having an office identical with such registered office. [1959 c 580 §70]

61.695 Change of registered office or registered agent of foreign corporation. (1) A foreign corporation authorized to transact

business in this state may change its registered office or change its registered agent, or both, upon delivering to the Office of Secretary of State for filing a statement setting forth:

(a) The name of the corporation.

(b) If the address of its registered office be changed, the address to which the registered office is to be changed, including street and number.

(c) If its registered agent be changed, the name of its successor registered agent.

(d) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

(e) That such change was authorized by resolution duly adopted by its board of directors.

(2) If a registered agent changes a business address to another place, the agent may change the address and the address of the registered office of any corporations of which the agent is the registered agent by filing a statement as required under subsection (1) of this section except that it need not be responsive to paragraph (c) or (e) of subsection (1) of this section and must recite that a copy of the statement has been mailed to each such corporation. In addition, the statement need be signed only by the registered agent.

(3) When the Secretary of State files a statement under this section, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

(4) A person who has been designated by a foreign nonprofit corporation as its registered agent may resign in accordance with the provisions of ORS 60.727 [1959 c 580 §71, 1965 c.631 §18, 1987 c 94 §58]

61.700 Service of process on foreign corporation. ORS 60.731, relating to service of process on foreign corporation, applies to nonprofit corporations, except that for the purpose of this section the reference therein to "this chapter" means ORS chapter 61. [1959 c 580 §72; 1987 c 94 §59]

61.705 [1959 c 580 §73, repealed by 1961 c 180 §10]

61.710 [Renumbered 61 972]

61.711 [1959 c.580 §74, repealed by 1961 c 180 §10]

61.715 Amendment to application for authority. ORS 60.711, relating to the filing of an amended application for authority to transact business, is applicable to nonprofit corporations. [1959 c 580 §75, 1985 c.728 §63, 1987 c.94 §60]

61.720 [Renumbered 61.976]

61.721 Withdrawal of foreign corporation. ORS 60.734, relating to withdrawal of a foreign corporation, is applicable to nonprofit corporations. [1959 c 580 §76; 1987 c 94 §61]

61.725 [1959 c.580 §77; repealed by 1987 c 94 §174]

61.730 [Renumbered 61.980]

61.731 [1959 c.580 §78, 1961 c.180 §5; repealed by 1963 c.492 §33 (61.732 enacted in lieu of 61 731)]

61.732 Cause for revocation of authority. ORS 60.737, relating to cause for revocation of authority, is applicable to nonprofit corporations. [1963 c.492 §34 (enacted in lieu of 61 731); 1987 c.94 §62]

61.735 [1959 c 580 §79; repealed by 1963 c.492 §35 (61.736 enacted in lieu of 61.735)]

61.736 Procedure for and effect of revoking authority; appeal. ORS 60.741 and 60.744, relating to revocation of authority, is applicable to nonprofit corporations. [1963 c.492 §36 (enacted in lieu of 61.735); 1987 c 94 §63]

61.740 [Renumbered 61.984]

61.741 Application to corporation authorized to transact business in this state on December 31, 1959. Foreign corporations which are duly authorized to transact business in this state on December 31, 1959, for a purpose or purposes for which a corporation might secure such authority under this chapter, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations authorized to transact business in this state under this chapter, and from December 31, 1959, such corporations shall be subject to all the limitations, restrictions, liabilities and duties prescribed herein for foreign corporations authorized to transact business in this state under this chapter. [1959 c.580 §80; 1987 c 94 §64]

61.745 Transacting business without authorization. (1) No foreign corporation transacting business in this state without authorization from the Secretary of State shall be permitted to maintain any action, suit or proceeding in any court of this state, until such corporation obtains authorization from the Secretary of State to do so. No action, suit or proceeding shall be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state, until authorization is obtained by such corporation or by a corporation which has acquired all or substantially all its assets.

(2) The failure of a foreign corporation to obtain authorization to transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state. [1959 c.580 §81; 1987 c.94 §65]

CEMETERIES AND CREMATORIES

61.755 Lands of cemetery or crematory corporation; exemption from execution, taxation and condemnation. A nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains, may purchase or take, by gift or devise, and own and hold lands for the sole purpose of either a cemetery or a crematory and burial place for incinerate remains. Such lands shall be exempt from execution, and from any appropriation for public purposes, and lots or portions of such land and space in any buildings thereon may be sold, if intended to be used exclusively for burial purposes, and in no wise with a view to the profit of the members of such corporation. The land so held for cemetery purposes shall not exceed 600 acres, but if the land already held for such purpose by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 20 acres at any one time. The land so held for the purposes of a crematory and the burial of incinerate remains shall not exceed 30 acres, but if the land already held for such purposes by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 10 acres at any one time. Lands held for the purposes described in this section shall be exempt from taxation as provided in ORS 307.150. [1959 c.580 §95, 1987 c 756 §1]

61.760 Revenues; restrictions on uses thereof. (1) A nonprofit corporation organized or existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains may, by its bylaws, provide that a stated percentage of the money received from the sale of lots and burial space, cremation of bodies, donations, gifts or other sources of revenue shall constitute an irreducible fund. Any bylaw enacted for the creation of the irreducible fund cannot be amended to reduce the fund.

(2) The board of directors may direct the investment of the money in the irreducible fund, but all investments of money deposited in the fund on or after January 1, 1972, shall be in

securities in classes and amounts approved by the State Treasurer and published in a list pursuant to ORS 97.820. If a bank or trust company qualified to engage in the trust business is directed by the board of directors to invest the money in the irreducible fund, the bank or trust company shall be governed by the provisions of ORS 128.057 and shall not be required to invest the money according to the list approved by the State Treasurer. An officer of the corporation shall file with the Secretary of State on or before April 15 of each year a verified statement in duplicate containing the same information pertaining to the irreducible fund as provided in ORS 97.810 (2) regarding endowment care funds. The Secretary of State may require the corporation to file, as often as the Secretary of State considers it to be necessary, a detailed report of the conditions and assets of the irreducible fund.

(3) The interest or income arising from the irreducible fund provided for in this section or by any bylaws, or so much thereof as is necessary, shall be devoted exclusively to the preservation and embellishment of the grounds, buildings and property of the corporation and the lots and space in buildings or grounds sold to the members of the corporation, or to the payment of the interest or principal of the debts authorized by subsection (5) of this section for the purchase of land, erecting buildings, and improvements. Any surplus thereof not needed or used for such purposes shall be invested as provided in this section and shall become part of the irreducible fund.

(4) After paying for the land and the erection of the original buildings and improvements thereon, all the future receipts and income of the corporation subject to the provisions in this section relating to the creation of an irreducible fund, whether from the sale of lots and burial space, cremation of bodies, donations, gifts and other sources, shall be applied exclusively to laying out, preserving, protecting, embellishing and beautifying the cemetery or the crematory and grounds thereof, and the avenues leading thereto, and to the erection of such buildings and improvements as may be necessary or convenient for cemetery or crematory purposes, and to pay the necessary expenses of the corporation.

(5) No debts shall be contracted by such corporation in anticipation of any future receipts, except for originally purchasing the lands authorized to be purchased by it, laying out and embellishing the grounds and avenues, erecting buildings and vaults on such land, and improving them for the purposes of the corporation. The corporation may issue bonds or notes for debts so contracted and may secure them by way of mort-

gage upon any of its lands, buildings, property and improvements excepting lots or space conveyed to the members. [1959 c.580 §96, 1971 c.225 §1]

61.765 Selling land unsuited for burials. If in the board of directors' opinion, any portion of the lands of a nonprofit corporation organized and existing solely for the purposes of either owning or operating a cemetery or the cremation of dead bodies and the burial and care of incinerate remains is unsuitable for burial purposes or other purposes of the corporation, the board of directors may sell such portion and apply the proceeds to the general purposes of such corporation in the same proportion and manner as provided by ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950. [1959 c.580 §97]

61.770 Burial lots or space; use, exemption from taxation, execution and liens; lien for purchase price of gravestone. Burial lots or space for burial of incinerate remains in buildings or grounds sold by a nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains shall be for the sole purpose of interment or deposit and safekeeping of incinerate remains. Such lots or space shall be exempt from execution, attachment or other lien or process, if used as intended by the purchaser thereof from such corporation, or the assigns or representatives of the purchaser, exclusively for burial purposes, and in no wise with a view to profit. Such lots or space shall be exempt from taxation as provided in ORS 307.150. The vendor of any gravestone, however, shall not be prevented from having and enforcing a lien thereon for all or part of its purchase price. If a suit is brought to enforce such a lien, the decree therein is enforceable thereafter; and, for the purpose of enabling the lien to be had and enforced, the gravestone shall be deemed personal property and may be severed and removed, under execution and order of sale, from the lot where it is situated and may be sold in the same manner as any other personal property. [1959 c.580 §98; 1987 c.756 §2]

61.775 Recording plan; power to improve and regulate grounds. A nonprofit corporation organized and existing solely for the purposes of owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains shall cause a plan of its land and grounds and of the lots laid out by it and of the niches or burial space in the buildings erected thereon to be made and recorded in the county in which such grounds and land are located, such lots or spaces to be numbered by regular con-

secutive numbers. Such corporation may inclose, improve, and adorn the grounds, buildings, and avenues, prescribe rules for the designation, improvement and adorning of lots and burial spaces and for erecting monuments, and prohibit any use, division, improvement or adornment of a lot or burial space which it may deem improper. [1959 c.580 §99]

ANNUAL REPORTS

61.805 Annual report of domestic and foreign corporations; contents; correction of report; amendments. (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall by its anniversary date deliver to the Office of Secretary of State for filing an annual report setting forth:

(a) The name of the corporation and the state or country under the laws of which it is incorporated.

(b) The street address of its registered office, and the name of the corporation's registered agent at that office in this state.

(c) The address, including street and number and mailing address, if different, of its principal office.

(d) The names and addresses of the president and secretary of the corporation.

(e) The category of the classification code established by rule of the Secretary of State most closely designating the primary activity of the corporation.

(f) If the Secretary of State so requires by rule, the federal employer identification number of the corporation. Any rules adopted pursuant to this paragraph may identify classes of corporations for which a federal employer identification number shall be required.

(g) Additional identifying information that the Secretary of State may require by rule.

(2) The information contained in the annual report shall be current as of 30 days before the anniversary of the corporation.

(3) The Secretary of State shall mail the annual report form to any address shown for the corporation in the current records of the Office of Secretary of State. The failure of the corporation to receive the annual report form from the Secretary of State shall not relieve the corporation of its duty to deliver an annual report to the division as required by this section.

(4) If an annual report does not contain the information required by this section, the Secre-

tary of State shall notify the reporting domestic or foreign corporation in writing and return the report to it for correction. The domestic or foreign corporation must correct the error within 45 days after the Secretary of State gives such notice.

(5) A domestic or foreign corporation may deliver to the Office of Secretary of State for filing an amendment to the annual report if a change in the information set forth in the annual report occurs after the report is delivered to the Office of Secretary of State for filing and before the next anniversary. This subsection applies only to a change that is not required to be made by an amendment to the articles of incorporation. The amendment to the annual report must set forth:

(a) The name of the corporation as shown on the records of the division; and

(b) The information as changed. [1959 c.580 §82; 1985 c.728 §64; 1987 c.94 §66; 1987 c.843 §15]

61.810 [1959 c.580 §83; 1961 c.180 §6; 1983 c.717 §23; repealed by 1985 c.728 §110]

61.815 [1959 c.580 §86; 1961 c.180 §7; 1983 c.717 §24; repealed by 1985 c.728 §110]

61.855 [1959 c.580 §84; 1961 c.180 §8; 1965 c.631 §19; 1985 c.351 §14; repealed by 1987 c.94 §174]

61.860 [1959 c.580 §85; repealed by 1987 c.94 §174]

MISCELLANEOUS PROVISIONS

61.905 Powers of Secretary of State. The Secretary of State shall have the power and authority reasonably necessary to administer ORS chapter 61 efficiently and to perform the duties therein imposed upon the Secretary of State. [1959 c.580 §87; 1985 c.728 §65]

61.910 [1959 c.580 §88; repealed by 1987 c.94 §174]

61.915 Certificates and certified copies to be received in evidence. The provisions of ORS 56.110, relating to certificates and certified copies to be received in evidence apply to non-profit corporations. [1959 c.580 §89; 1983 c.717 §24a]

61.920 [1959 c.580 §90; repealed by 1987 c.94 §174]

61.925 Greater voting requirements. Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation require the vote or concurrence of a greater proportion of the members or directors, as the case may be, than required by ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950 with respect to such action, the provisions of the articles of incorporation shall control. [1959 c.580 §91]

61.930 Waiver of notice. Whenever any notice is required to be given to any member or director of a corporation under the provisions of ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950 or under the provisions of the articles of incorporation or bylaws of the corporation, waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

[1959 c 580 §92]

61.935 Action by members or directors without a meeting. Any action which ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950 requires to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof, or all of the directors, as the case may be. Such consent shall have the same force and effect as a unanimous vote, and may be so described in any document filed with the Secretary of State under ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950. [1959 c.580 §93]

61.940 Liability for unauthorized assumption of corporate powers. All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof. [1959 c.580 §94]

61.945 Reservation of power by Legislative Assembly. The legislature shall have power to amend, repeal or modify ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950. [1959 c 580 §100]

61.950 Effect of repeal of prior Acts. The existence of corporations formed or existing on December 31, 1959, shall not be impaired by the enactment of ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950 nor

by any change in the requirements for the formation of corporations, nor by any amendment or repeal of the laws under which they were formed or created; and except as otherwise expressly provided in ORS 61.005 to 61.125, 61.131 to 61.370, 61.380 to 61.481 and 61.505 to 61.950, the repeal of a prior Act by section 104, chapter 580, Oregon Laws 1959, shall not affect any liability or penalty incurred, under the provisions of such Act, prior to the repeal thereof. [1959 c 580 §101]

61.955 Private foundations; restrictions on self-dealing, income distribution, excess business holdings, investments and taxable expenditures. Notwithstanding any provision to the contrary in its articles of incorporation, a corporation organized at any time under the Oregon Nonprofit Corporation Law (ORS chapter 61), which is a "private foundation" as defined in section 509 of the Internal Revenue Code of 1954, shall not engage in any act of self-dealing as defined in section 4941 (d) of the Internal Revenue Code of 1954; shall distribute its income at such time and in such manner as not to subject the corporation to the taxes on failure to distribute income imposed by section 4942 of the Internal Revenue Code of 1954; shall not retain any excess business holdings as defined in section 4943 (c) of the Internal Revenue Code of 1954; shall not make any investments in such manner as to subject the corporation to the taxes on investments which jeopardize charitable purpose imposed by section 4944 of the Internal Revenue Code of 1954; and shall not make any taxable expenditures as defined in section 4945 (d) of the Internal Revenue Code of 1954. [1971 c 216 §1]

61.972 [Formerly 61 710; 1963 c.583 §18; repealed by 1971 c 589 §19]

61.976 [Formerly 61 720, repealed by 1971 c.589 §19]

61.980 [Formerly 61 730; 1971 c.749 §75; repealed by 1971 c 589 §19 and by 1971 c 749 §84]

61.984 [Formerly 61.740, repealed by 1971 c.589 §19]

61.990 [Repealed by 1971 c 589 §19]