

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 3 BUSINESS ASSOCIATIONS
PART 2 PROFIT CORPORATIONS

12.3.2.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[12.3.2.1 NMAC - Rp, 12.3.2.1 NMAC, 12-15-09]

12.3.2.2 SCOPE: This rule applies to all domestic and foreign profit corporations, unless exempted by law.
[12.3.2.2 NMAC - Rp, 12.3.2.2 NMAC, 12-15-09]

12.3.2.3 STATUTORY AUTHORITY: NMSA 1978 Sections 8-8-4 and 53-18-1.
[12.3.2.3 NMAC - Rp, 12.3.2.3 NMAC, 12-15-09]

12.3.2.4 DURATION: Permanent.
[12.3.2.4 NMAC - Rp, 12.3.2.4 NMAC, 12-15-09]

12.3.2.5 EFFECTIVE DATE: December 15, 2009, unless a later date is cited at the end of a section.
[12.3.2.5 NMAC - Rp, 12.3.2.5 NMAC, 12-15-09]

12.3.2.6 OBJECTIVE: The purpose of this rule is to facilitate the formation and continuation of profit corporations as provided by law.
[12.3.2.6 NMAC - Rp, 12.3.2.6 NMAC, 12-15-09]

12.3.2.7 DEFINITIONS: See 12.3.1.7 NMAC.
[12.3.2.7 NMAC - Rp, 12.3.2.7 NMAC, 12-15-09]

12.3.2.8 DOMESTIC PROFIT CORPORATIONS: A domestic profit corporation shall comply with the requirements of the Business Corporations Act, NMSA 1978, Chapter 53, Articles 11 through 18.

A. Filing requirements. A domestic profit corporation shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions, and shall pay all filing fees required by NMSA 1978 Section 53-2-1.

B. Name. A domestic profit corporation shall comply with the name requirements in NMSA 1978 Section 53-11-7 and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, formally applying for, or reinstating a name. A corporation in existence on June 17, 1983 is deemed to be in compliance with the requirements of NMSA 1978 Section 53-11-7 for a separate word or abbreviation describing the type of corporation named.

C. Filing year. A domestic profit corporation shall file biennial reports and supplemental reports with the bureau:

- (1) for even-numbered taxable year ends if the last digit of its New Mexico certificate of incorporation number is an even number;
- (2) for odd-numbered taxable year ends if the last digit of its New Mexico certificate of incorporation number is an odd number;
- (3) for the calendar year determined by the bureau if it was assigned a duplicate number before 1980; the bureau shall notify the corporation of the appropriate filing years.

D. Taxable year. For a new domestic corporation for which no taxable year period has been determined, the bureau will presume that the corporation's taxable year ends December 31. If a new domestic profit corporation selects a different end date for its taxable year, it shall so inform the commission.

E. Required documents.

(1) **Articles of incorporation.** A domestic profit corporation shall adopt and file with the commission articles of incorporation that comply with NMSA 1978 Sections 53-12-2 and 53-12-3. The corporation may amend or restate the articles as provided in NMSA 1978 Sections 53-13-1 through 53-13-12.

(2) **Statement designating registered agent and office.** A domestic profit corporation shall have and continuously maintain on file with the commission a registered agent and office that meet the requirements in NMSA 1978 Sections 53-11-11, 53-11-12, and 53-11-13.

F. Merger and consolidation. Two or more domestic corporations may merge or consolidate in compliance with the applicable requirements of NMSA 1978 Sections 53-14-1 through 53-14-7 and shall file articles of merger, consolidation, or exchange as required by NMSA 1978 Sections 53-14-4 and 53-14-5. Shareholders may convert a domestic profit corporation into a limited liability company by complying with NMSA 1978 Section 53-19-60.

G. Dormant status. A domestic profit corporation that meets the requirements of NMSA 1978 Section 53-5-9 for dormant status, may, in lieu of filing a required corporate report, file a statement that it is no longer actively engaged in business in New Mexico. A dormant corporation may extend its dormant status, or may be fully revived by complying with NMSA 1978 Section 53-5-9.

H. Dissolution. A domestic profit corporation seeking voluntary dissolution shall comply with the requirements for dissolution provided in NMSA 1978 Sections 53-16-1 through 53-16-24, and file a statement of intent to dissolve as required by NMSA 1978 Section 53-16-4, and articles of dissolution that comply with NMSA 1978 Sections 53-16-11 and 53-16-12. A domestic profit corporation may revoke voluntary dissolution proceedings as provided in NMSA 1978 Sections 53-16-7 and 53-16-8 by filing a statement of revocation required by NMSA 1978 Section 53-16-9.

I. Administrative revocation and reinstatement. The commission may administratively revoke a domestic profit corporation by issuing a certificate of revocation under the circumstances and following the process provided in NMSA 1978 Section 53-11-12. A corporation may apply to the commission for reinstatement following the process and within the time period provided in NMSA 1978 Section 53-11-12.
[12.3.2.8 NMAC - Rp, 12.3.2.8 NMAC, 12-15-09]

12.3.2.9 FOREIGN PROFIT CORPORATIONS: A foreign profit corporation shall comply with the applicable requirements of the Business Corporations Act, NMSA 1978, Chapter 53, Articles 11 through 18.

A. Filing requirements. A foreign profit corporation shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions, and shall pay all filing fees required by NMSA 1978 Section 53-2-1.

B. Name. A foreign profit corporation shall comply with the name requirements in NMSA 1978 Section 53-17-3 and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, registering, formally applying for, or reinstating a name. A corporation in existence on June 17, 1983 is deemed to be in compliance with the requirement of NMSA 1978 Section 53-11-7 for a separate word or abbreviation describing the type of corporation named.

C. Filing year. A foreign profit corporation shall file biennial corporate reports and supplemental reports with the bureau:

- (1) for even-numbered taxable year ends if the last digit of its New Mexico certificate of authority number is an even number;
- (2) for odd-numbered taxable year ends if the last digit of its New Mexico certificate of authority number is an odd number;
- (3) for the calendar year determined by the bureau if it was assigned a duplicate number before 1980; the bureau shall notify the corporation of the appropriate filing years.

D. Taxable year. For a new foreign profit corporation for which no taxable year period has been determined, the bureau will presume that the corporation's taxable year ends December 31. If a new foreign profit corporation selects a different end date for its taxable year, it shall so inform the commission.

E. Required documents.

(1) **Certificate of authority.** Before transacting business in New Mexico, a foreign profit corporation shall obtain a certificate of authority from the commission pursuant to NMSA 1978 Section 53-17-1 by filing an application containing the information and supporting documents required in NMSA 1978 Sections 53-17-5 through 53-17-7. A foreign profit corporation shall amend its certificate of authority as provided in NMSA 1978 Section 53-17-14.

(2) **Statement designating registered agent and office.** A foreign profit corporation shall have and continuously maintain on file with the commission a registered office and agent that meet the requirements of NMSA 1978 Sections 53-17-9 and 53-17-10.

F. Merger and conversion. A foreign profit corporation that is a party to a statutory conversion or merger shall comply with, and file articles of merger or conversion as required by, NMSA 1978 Section 53-17-13.

G. Dormant status. A foreign profit corporation that meets the requirements of NMSA 1978 Section 53-5-9 for dormant status may, in lieu of filing a required corporate report, file a statement that it is no

longer actively engaged in business in New Mexico. A dormant corporation may extend its dormant status, or may be fully revived by complying with NMSA 1978 Section 53-5-9.

H. Withdrawal. A foreign profit corporation seeking to withdraw from doing business in New Mexico may procure a certificate of withdrawal from the commission by filing an application for withdrawal that complies with the requirements of NMSA 1978 Section 53-17-15 and 53-17-16.

I. Administrative revocation and reinstatement. The commission may revoke a foreign profit corporation's certificate of authority for the reasons provided in NMSA 1978 Section 53-17-17 by issuing a certificate of revocation pursuant to NMSA 1978 Section 53-17-18. A foreign profit corporation may apply to the commission for reinstatement following the process and within the time period provided in NMSA 1978 Section 53-17-18.

[12.3.2.9 NMAC - Rp, 12.3.2.11 NMAC, 12-15-09]

12.3.2.10 FIRST REPORT: A domestic or foreign profit corporation shall file an initial report on the schedule prescribed by and as required by NMSA 1978 Section 53-5-2 through 53-5-9 on the commission-prescribed form described in this rule and available as provided in 12.3.1 NMAC.

[12.3.2.10 NMAC - Rp, 12.3.2.9 & 12.3.2.12 NMAC, 12-15-09]

12.3.2.11 BIENNIAL REPORT AND SUPPLEMENTAL REPORT: A domestic or foreign profit corporation shall file biennial and supplemental reports as required by NMSA 1978 Section 53-5-2 through 53-5-9 on the commission-prescribed form described in this rule and available as provided in 12.3.1 NMAC.

[12.3.2.11 NMAC - Rp, 12.3.2.10 & 12.3.2.13 NMAC, 12-15-09]

12.3.2.12 REQUIRED FORMS: A domestic or foreign profit corporation shall file initial, biennial and supplemental reports as required by NMSA 1978 Section 53-5-2 through 53-5-9 on the commission-prescribed form available as provided in 12.3.1 NMAC.

A. First reports, biennial reports and supplemental reports shall contain:

- (1) exact corporate name and U.S. mailing address;
- (2) principal place of business in New Mexico;
- (3) principal office outside of New Mexico for a foreign corporation;
- (4) NMPRC certificate of incorporation/authority number;
- (5) for foreign corporations: registered place of business in New Mexico if different from registered office;
- (6) state or country of incorporation;
- (7) registered agent and office located within New Mexico for service or process;
- (8) names and addresses of all directors and officers;
- (9) date and signature and title of an authorized officer or agent; and
- (10) filing fees.

B. Filing fees, report due date, late filing penalty.

(1) **Filing fees.** A \$25.00 filing fee is due and payable to the commission at the time of filing of each domestic or foreign first report, biennial report and supplemental report.

(2) **Report due dates.**

(a) **First report.** A domestic or foreign first report shall be filed within thirty days of the date of incorporation or qualification in New Mexico.

(b) **Biennial report.** A domestic or foreign biennial report shall be filed on or before the fifteenth day of the third month following the end of the corporation's taxable year. Biennial means every other year, not twice a year for filing purposes required report based on the last digit of the number referred to in Paragraph (4) of Subsection A of 12.3.2.12 NMAC, i.e., even number will file its biennial report for its even numbered taxable year-end.

(c) **Supplemental report.** A domestic of foreign supplemental report shall be filed within thirty days if, after the filing of the biennial report, a change is made in:

(i) the mailing address, street address, rural route number and box number or the geographical location of its registered office in this state and the name of the agent upon whom process against the corporation may be served;

(ii) the name or address or any of the directors of officers of the corporation or the date when the term of office of each expires; or

(iii) its principal place of business within or without the state.

(3) **Late filing penalty.** A \$200.00 late filing penalty is required if a report is filed untimely.

C. Instructions.

(1) Enter exact corporate name and complete mailing address must be given to meet postal delivery requirements..

(2) Enter principal place of business in New Mexico. Enter "NONE," if applicable.

(3) Enter principal office outside of New Mexico, if different from the registered office in state or country of incorporation. Enter "NONE," if applicable.

(4) Enter original NMPRC certificate of incorporation/authority number issued by the corporations bureau or as assigned by computer pre-printed information.

(5) Enter foreign corporation's registered address in state or country of incorporation which may be different from the address referred to in Paragraph (3) of Subsection A of 12.3.2.12 NMAC on principal office outside of New Mexico.

(6) Enter corporation's state or country of incorporation unless pre-printed or as corrected.

(7) Enter registered agent and address located in New Mexico. Each corporation shall have and continuously maintain in New Mexico:

(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 New Mexico whose business office is identical with the registered office, or a domestic corporation, or a foreign corporation authorized to transact business in New Mexico having a business office identical with the registered office; and

(c) an agent's address must be acceptable for service of process purposes; a post office box is unacceptable.

(8) Officers and directors are as set forth in NMSA 1978 Sections 53-8-18, 53-8-23, 53-8-83, 53-2-10, 53-11-35, and 53-11-48. Enter all officers and directors with respective addresses. Each New Mexico corporation shall have officers, with titles and duties as shall be stated in the bylaws or in a resolution of the board of directors which is not inconsistent with the bylaws, and as many officers as may be necessary to enable the corporation to sign instruments required under the Business Corporation Act.

(a) The number of directors of a New Mexico corporation shall consist of one or more members.

(b) Each director shall hold office for the term for which he/she is elected and until his or her successor has been elected and qualified.

(9) **NMSA 1978 section 53-2-10 private remedy.**

(a) Any person who suffers any loss of money or property as a result of being designated a director of a corporation without giving his consent may bring an action against the designating corporation to recover actual damages or one thousand dollars (\$1,000), whichever is greater.

(b) The court may award attorneys' fees and costs to the party injured as a result of the director designation if he prevails. The court may award attorney's fees to the corporation charged if the court finds that the action brought against the corporation was groundless.

(c) The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this state.

(10) **NMSA 1978 section 53-5-5 corporate reports, affirmation, penalty.**

(a) All reports required to be filed with the commission pursuant to the Corporate Reports Act shall contain the following affirmation: "Under penalties of perjury, I declare and affirm that I have examined this report, including the accompanying schedules and statement, and that all statements contained therein are true and correct."

(b) Any person who makes and subscribes any report required under the Corporate Reports Act that contains a false statement, which statement is known to be false by such person, is guilty of perjury and upon conviction shall be punished as provided for in the perjury statutes of this state.

(c) The report shall be signed and sworn to by the chairman of the board, president, vice president, secretary, principal accounting officer or authorized agent of the corporation.

(11) **Application for period extension.** Any corporation may, upon application to the commission by the due date upon which a report is required to be filed, petition the commission for an extension of time. The commission may, for good cause, extend for no more than a total of twelve months the date on which the payment of any fee is required. A copy of a commission extension shall be attached to the required report.

(12) **Mandatory IRS extension.** The commission shall, when an extension of time has been granted

a corporation under the United States Internal Revenue Code for the time in which to file a report, grant the corporation the same extension of time provided that a copy of the approved (signed) federal extension of time (IRS 7004 or 7005) is attached to the corporation's report. However, the bureau will acknowledge and approve the extension upon receiving a copy of a valid IRS extension prior to the filing of a corporate report.
[12.3.2.12 NMAC - Rp, 12.3.2.10 & 12.3.2.13 NMAC, 12-15-09]

HISTORY OF 12.3.2 NMAC:

Pre-NMAC History. The material in this part was derived from that previously filed with the state records center: Docket No. 83-1-CORP, In the Matter of Rules and Regulations for the Corporation and Franchise Tax Department, 2-22-83.

SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department, 3-15-84.

SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department, 11-8-84.

History of Repealed Material.

SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department (filed 3-15-84), repealed 7-15-05.

SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department (filed 11-8-84), repealed 7-15-05.

12.3.2 NMAC, Profit Corporations (filed 7-01-05) repealed 12-15-09.

Other History.

Only those applicable portions of SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department (filed 3-15-84) and SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department (filed 11-8-84) were replaced by 12.3.2 NMAC, Profit Corporations, effective 7-15-05.

12.3.2 NMAC, Profit Corporations (filed 7-01-05) was replaced by 12.3.2 NMAC, Profit Corporations, effective 12-15-09.