

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

12.3.3.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[12.3.3.1 NMAC - Rp, 12.3.3.1 NMAC, 12-15-09]

12.3.3.2 SCOPE: This rule applies to all domestic and foreign nonprofit corporations, unless exempted by law.
[12.3.3.2 NMAC - Rp, 12.3.3.2 NMAC, 12-15-09]

12.3.3.3 STATUTORY AUTHORITY: NMSA 1978 Sections 8-8-4, 3-29-20, 53-8-7, 53-8-7.1, 53-8-8, 53-8-9, 53-8-31, 53-8-32, 53-8-35 through 53-8-45, 53-8-47 through 53-8-49, 53-8-50 through 53-8-54, 53-8-60, 53-8-64, 53-8-66 through 53-8-69, 53-8-71, 53-8-72, 53-8-75 through 53-8-80, 53-8-82, 53-8-83, 53-8-85, 53-8-88.1 and 53-19-60.
[12.3.3.3 NMAC - Rp, 12.3.3.3 NMAC, 12-15-09]

12.3.3.4 DURATION: Permanent.
[12.3.3.4 NMAC - Rp, 12.3.3.4 NMAC, 12-15-09]

12.3.3.5 EFFECTIVE DATE: December 15, 2009, unless a later date is cited at the end of a section.
[12.3.3.5 NMAC - Rp, 12.3.3.5 NMAC, 12-15-09]

12.3.3.6 OBJECTIVE: The purpose of this rule is to facilitate the formation and continuation of nonprofit corporations as provided by law.
[12.3.3.6 NMAC - Rp, 12.3.3.6 NMAC, 12-15-09]

12.3.3.7 DEFINITIONS: See 12.3.1.7 NMAC.
[12.3.3.7 NMAC - Rp, 12.3.3.7 NMAC, 12-15-09]

12.3.3.8 DOMESTIC NONPROFIT CORPORATIONS: A domestic nonprofit corporation shall comply with the applicable requirements of the Nonprofit Corporation Act, NMSA 1978 Sections 53-8-1 through 53-8-99.

A. Filing requirements. A domestic nonprofit 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 53-8-85.

B. Name. A domestic nonprofit corporation shall comply with name requirements of NMSA 1978 Sections 53-8-7 and 53-8-7.1, and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, formally applying for, or reinstating a name.

C. Taxable year determination.

(1) When a domestic nonprofit corporation has a taxable year which is less than twelve (12) months, the corporation shall file satisfactory proof with, and notify the bureau, of its 12-month taxable year reporting period for purposes of corporate reports. Satisfactory proof shall include appropriately authenticated copies of internal revenue service approval of the short taxable year and of the corporation's taxable year end.

(2) For a new domestic nonprofit corporation for which no taxable year period has been determined, the bureau will presume that the corporation's taxable year ends December 31 and that the corporation will report on a calendar-year basis. When a new nonprofit corporation determines the end of its first taxable year, the corporation will notify the bureau within thirty (30) days.

(3) For a domestic nonprofit corporation, for which no taxable year has been determined because it is exempt from reporting to the internal revenue service or otherwise, the bureau will presume that the corporation's taxable year for reporting purposes ends on December 31 and the corporation will report on a calendar-year basis.

D. Documents required. All corporate reports shall include the street address of the business office of the registered agent and addresses for each of the corporation's directors and officers.

(1) **Articles of incorporation.** A domestic nonprofit corporation shall adopt and file with the commission articles of incorporation that comply with NMSA 1978 Sections 53-8-31 and 53-8-32. The corporation may amend or restate its articles as provided in NMSA 1978 Sections 53-8-35 through 53-8-39.

(2) **Statement designating registered agent and office.** A domestic nonprofit corporation shall have and continuously maintain on file with the commission a registered office and agent that meet the requirements of NMSA 1978 Sections 53-8-8 and 53-8-9.

E. Merger and consolidation.

(1) **Merger of domestics.** Two or more domestic nonprofit corporations may merge or consolidate in compliance with the applicable requirements of NMSA 1978 Sections 53-8-40 through 53-8-45 and shall file articles of merger or articles of consolidation as required by NMSA 1978 Section 53-8-43.

(2) **Merger or consolidation of foreign and domestic.** One or more foreign nonprofit corporations and one or more domestic nonprofit corporations may merge or consolidate in compliance with the applicable requirements of NMSA 1978 Section 53-8-45 and shall file articles of merger or articles of consolidation as required by NMSA 1978 Section 53-8-43.

(3) **Reorganization as sanitary projects act association.** A nonprofit corporation may reorganize under the Sanitary Projects Act by complying with NMSA 1978 Section 3-29-20.

F. Dormant status. A domestic nonprofit corporation that meets the requirements of NMSA 1978 Section 5-8-88.1 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 5-8-88.1.

G. Dissolution. A domestic nonprofit corporation shall comply with the requirements for dissolution provided in NMSA 1978 Sections 53-8-47 through 53-8-49 and file articles of dissolution that comply with NMSA 1978 Sections 53-8-51 and 53-8-52. A domestic nonprofit corporation may cancel voluntary dissolution proceedings as provided in NMSA 1978 Section 53-8-50.

H. Administrative revocation and reinstatement. The commission may revoke a domestic nonprofit corporation's certificate of incorporation for the reasons provided in NMSA 1978 Section 53-8-53, by issuing a certificate of revocation pursuant to NMSA 1978 Section 53-8-54. A nonprofit corporation may apply for reinstatement following the process and within the time period provided in NMSA 1978 Section 53-8-54. [12.3.3.8 NMAC - Rp, 12.3.3.8 NMAC, 12-15-09]

12.3.3.9 FOREIGN NONPROFIT CORPORATIONS: A foreign nonprofit corporation shall comply with the applicable requirements of the Nonprofit Corporation Act, NMSA 1978 Section 53-8-1 through 53-8-99.

A. Filing requirements. A foreign nonprofit 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 53-8-85.

B. Name. A foreign nonprofit corporation shall comply with the name requirements in NMSA 1978 Sections 53-8-66 and 53-8-67 and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, formally applying for, or reinstating a name.

C. Required documents.

(1) **Certificate of authority.** A foreign nonprofit corporation shall obtain a certificate of authority from the commission pursuant to NMSA 1978 Section 53-8-64 before conducting affairs in New Mexico, by filing an application containing the information and supporting documents required in NMSA 1978 Sections 53-8-68 and 53-8-69. A foreign nonprofit corporation may obtain an amended certificate of authority by meeting the requirements of NMSA 1978 Section 53-8-76.

(2) **Statement designating registered agent and office.** A foreign nonprofit corporation shall have and continuously maintain on file with the commission a registered office and agent that meet the requirements of NMSA 1978 Sections 53-8-71 and 53-8-72.

D. Merger. A foreign nonprofit corporation may merge in compliance with NMSA 1978 Section 53-8-75 and shall file articles of merger as required by NMSA 1978 Section 53-8-75.

E. Dormant status. A foreign nonprofit corporation that meets the requirements of NMSA 1978 Section 53-8-88.1 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 53-8-88.1.

F. Withdrawal. A foreign nonprofit 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 Sections 53-8-77 and 53-8-78.

G. Administrative revocation and reinstatement. The commission may revoke a foreign nonprofit corporation's certificate of authority for the reasons provided in NMSA 1978 Section 53-8-79, by issuing a certificate of revocation pursuant to NMSA 1978 Section 53-8-80.

[12.3.3.9 NMAC - Rp, 12.3.3.11 NMAC, 12-15-09]

12.3.3.10 FIRST REPORT: A domestic or foreign nonprofit corporation shall file an initial report complying with the schedule and requirements of NMSA 1978 Sections 53-8-82 and 53-8-83 on the commission-prescribed form described in this rule and available as provided in 12.3.1 NMAC.

[12.3.3.10 NMAC - Rp, 12.3.3.9 & 12.3.3.12 NMAC, 12-15-09]

12.3.3.11 ANNUAL REPORT AND SUPPLEMENTAL REPORT: A domestic or foreign nonprofit corporation shall file annual and supplemental reports as required by NMSA 1978 Sections 53-8-82 and 53-8-83 on the commission-prescribed form described in this rule and available as provided in 12.3.1 NMAC.

[12.3.3.11 NMAC - Rp, 12.3.3.10 & 12.3.3.13 NMAC, 12-15-09]

12.3.3.12 REQUIRED FORMS: A domestic or foreign nonprofit corporation shall file initial, annual and supplemental reports as required by NMSA 1978 Sections 53-8-82 and 53-8-83 on the commission-prescribed form available as provided in 12.3.1 NMAC.

A. First reports, annual 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 dates, late filing penalty.

(1) **Filing fees.** A \$10.00 filing fee is due and payable to the commission at the time of filing of each domestic or foreign first report, annual 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) **Annual report.** A domestic or foreign annual report shall be filed on or before the fifteenth day of the fifth month following the end of the corporation's taxable year.

(c) **Supplemental report.** A domestic or foreign supplemental report shall be filed within thirty days if, after the filing of the annual 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 or 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 \$10.00 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 department 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 item no. 3 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 and 53-2-10. Enter all officers and directors with respective addresses. Each New Mexico corporation shall have officers, with title 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 Nonprofit Corporation Act.

- (a) One of the officers shall have the duty to record the proceedings of the meetings of the members and directors in a book to be kept for that purpose.
- (b) In the absence of any provision, all officers shall be elected or appointed annually by the board of the directors. If the bylaws so provide, any two or more offices may be held by the same person.
- (c) Officers and directors shall be identified accordingly, i.e., identified if an officer is also a director to meet statutory requirements. Two authorized officers are required to sign documents for filing purposes under the Nonprofit Corporations Act.
- (d) The number of directors of a New Mexico corporation shall be not less than three. Each director shall hold office for the terms for which he/she is elected and appointed until his or her successor shall have 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 53-8-9 corporate reports, affirmation, penalty.

- (a) All reports required to be filed with the commission pursuant to the Nonprofit Corporations 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 Nonprofit Corporations 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 any two of its directors or officers. If the corporation is in the hands of a receiver or trustee, the report shall be executed on behalf of the corporation by the receiver or trustee. A copy of the report shall be maintained at the corporation's principal place of business as contained in the report and shall be made available to the general public for inspection during regular business hours.

(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 nonprofit 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 2758) is attached to the corporation's report.

[12.3.3.12 NMAC - Rp, 12.3.3.10, 12.3.3.12 & 12.3.3.13 NMAC, 12-15-09]

HISTORY OF 12.3.3 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.

12.3.3 NMAC, Non-Profit Corporations (filed 7-1-05) 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 12.3.3 NMAC, Non-Profit Corporations, effective 7-15-05.

12.3.3 NMAC, Non-Profit Corporations (filed 7-1-05) was replaced by 12.3.3 NMAC, Non-Profit Corporations, effective 12-15-09.