

CHAPTER 415A
PROFESSIONAL CORPORATION ACT

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" **[§415A-1] Title.** This chapter shall be known and may be cited as the "Hawaii Professional Corporation Act". [L 1985, c 259, pt of §1]

" **§415A-2 Definitions.** As used in this chapter, unless the context otherwise requires, the term:

"Director" means the director of commerce and consumer affairs.

"Disqualified person" means any natural person, corporation, partnership, fiduciary, trust, association, government agency, or other entity which for any reason is or becomes ineligible under this chapter to own shares issued by a professional corporation.

"Licensing authority" means the officer, board, agency, court, or other authority in this State which has the power to issue a license or other legal authorization to render a professional service.

"Other entity" includes a domestic or foreign corporation, whether organized for profit or not, a domestic or foreign limited liability company, general partnership, limited partnership, or limited liability partnership.

"Professional corporation" means a domestic professional corporation for profit subject to this chapter.

"Professional service" means any service which lawfully may be rendered only by persons licensed under chapters 442, 448, 453, 455, 457, 459, 461, 463E, 465, 466, 471, and 605, and section 554-2.

"Qualified person" means an individual who is eligible under this chapter to own shares issued by a professional corporation. [L 1985, c 259, pt of §1; am L 1987, c 135, §106 and c 300, §2; am L 1989, c 81, §1; am L 1995, c 198, §5; am L 1996, c 13, §8; am L 1997, c 48, §1; am L 1999, c 280, §8; am L 2002, c 40, §42 and c 130, §73; am L 2009, c 11, §49]

Note

The 2009 amendment is retroactive to April 3, 2008. L 2009, c 11, §76(2).

" **§415A-3 Purposes.** (a) Except as provided in this section, professional corporations may be organized under this chapter only for the purpose of rendering professional services and services ancillary thereto within a single profession.

(b) A professional corporation may be incorporated for the purpose of rendering professional services within two or more professions, and for any purpose or purposes for which corporations may be organized under chapter 414, to the extent

that any combination of professional purposes or of professional and business purposes is permitted by the licensing laws and rules of this State applicable to the professions. [L 1985, c 259, pt of §1; am L 1987, c 135, §108; am L 2002, c 40, §43]

" **§415A-4 Prohibited activities.** A professional corporation shall not engage in any profession or business other than the profession or professions and businesses permitted by its articles of incorporation, except that a professional corporation may invest its funds in real estate, mortgages, stocks, bonds, or any other type of investment. [L 1985, c 259, pt of §1]

" **§415A-5 General powers.** A professional corporation shall have the powers enumerated in chapter 414, except that a professional corporation may be a promoter, general partner, member, associate, or manager only of a partnership, joint venture, trust, or other enterprise engaged only in rendering professional services or carrying on business permitted by the corporation's articles of incorporation. [L 1985, c 259, pt of §1; am L 1987, c 135, §112; am L 2002, c 40, §44]

" **§415A-6 Rendering professional services.** A professional corporation may render professional services in this State only through individuals permitted to render such services in this State; but nothing in this chapter shall require any person who is employed by a professional corporation to be licensed to perform services for which no license is otherwise required or prohibit the rendering of professional services by a licensed individual acting in the licensee's individual capacity. [L 1985, c 259, pt of §1; am L 1987, c 135, §113]

" **§415A-7 Right of corporation to acquire its own shares.** A professional corporation may purchase its own shares from a disqualified person without regard to the availability of capital or surplus for such purchase; provided no purchase of or payment for its own shares shall be made at a time when the corporation is insolvent or when such purchase or payment would make it insolvent. [L 1985, c 259, pt of §1]

" **§415A-8 Corporate name.** The name of a professional corporation:

- (1) May be any name permitted by law expressly applicable to the profession in which the corporation is engaged or by a rule of the licensing authority of the profession; and

- (2) Shall not be the same as, or substantially identical to, the name of any domestic corporation, partnership, limited partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability company, or limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in this State, except that this provision shall not apply if the applicant files with the director either of the following:
- (A) The written consent from the entity or holder of a reserved or registered name to use and register the same or substantially identical name, and one or more words are added by the applicant to make the name distinguishable from the name on record; or
 - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State. [L 1985, c 259, pt of §1; am L 1987, c 135, §114; am L 1996, c 92, §8; am L 1999, c 249, §14; am L 2000, c 219, §25; am L 2001, c 129, §52; am L 2012, c 58, §11]

" **§415A-8.5 Administrative order of abatement for infringement of corporate name.** (a) Any professional corporation in good standing claiming that the name of any domestic corporation, partnership, limited partnership, limited liability partnership, or limited liability company existing under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability partnership, or limited liability company authorized to transact business in this State is substantially identical to, or confusingly similar with, its name may file a petition with the director for an administrative order of abatement to address the infringement of its name. The petition shall set forth the facts and authority that support the petitioner's claim that further use of the name should be abated. The petitioner, at the petitioner's expense, shall notify the registrant of the hearing and the registrant shall be given an opportunity to address the petition at a hearing. The notice shall be made and the hearing held in accordance with the contested case provisions of chapter 91.

(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but:
 - (A) Require the entity to register a new trade name with the director; and
 - (B) Require the entity to conduct business in this State under this new trade name; or
- (2)
 - (A) Require the entity to change its registered name;
 - (B) Require the entity to register the new name with the director; and
 - (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with chapter 414, 414D, 415A, 425, 425E, or 428, as applicable.

(c) Any person aggrieved by the director's order under this section may obtain judicial review in accordance with chapter 91 by filing a notice of appeal in circuit court within thirty days after the issuance of the director's order. The trial by the circuit court of any such proceeding shall be de novo. Review of any final judgment of the circuit court under this section shall be governed by chapter 602. [L 1999, c 250, §2; am L 2002, c 40, §45; am L 2003, c 210, §7]

" **§415A-9 Issuance and transfer of shares; share certificates.** (a) A professional corporation may issue shares, fractional shares, and rights or options to purchase shares only to individuals authorized by law in this State or in any other state or territory of the United States or the District of Columbia to render a professional service permitted by the corporation's articles of incorporation.

(b) Where the licensing authority for any profession deems it necessary to prevent violations of the ethical standards of such profession, the licensing authority may by rule further restrict, condition, or abridge the authority of professional corporations to issue shares but no such rule, of itself, shall have the effect of causing a shareholder of a professional corporation at the time the rule becomes effective to become a disqualified person. All shares issued in violation of this section or any rule under this section shall be void.

(c) A shareholder of a professional corporation may transfer or pledge shares, fractional shares, and rights or options to purchase shares of the corporation only to

individuals qualified under this section to hold shares issued directly to them by the professional corporation. Any transfer of shares in violation of this subsection shall be void; provided that nothing contained herein shall prohibit the transfer of shares of a professional corporation by operation of law or court decree; and provided further that a shareholder may transfer part or all of such shares to a revocable living or inter vivos trust with respect to which such shareholder:

- (1) Retains the unilateral right of revocation;
- (2) Is the sole beneficiary during the shareholder's lifetime; and
- (3) Is either a trustee or co-trustee or otherwise retains the right to direct the trustee in all matters related to the corporation or its shares; but nothing in such trust nor in this section shall in any way diminish the liability of the shareholder with respect to the professional actions of the corporation.

(d) Every certificate representing shares of a professional corporation shall state conspicuously upon its face that the shares represented thereby are subject to restrictions on transfer imposed by this chapter and are subject to such further restrictions on transfer as may be imposed by the licensing authority from time to time pursuant to this chapter. [L 1985, c 259, pt of §1; am L 1987, c 135, §115]

" **§415A-10 Death or disqualification of a shareholder.** (a) Upon the death of a shareholder of a professional corporation, or if a shareholder of a professional corporation becomes a disqualified person, or if shares of a professional corporation are transferred by operation of law or court decree to a disqualified person, the shares of the deceased shareholder or of the disqualified person may be transferred to a qualified person and, if not so transferred, shall be purchased or redeemed by the corporation to the extent of funds which may be legally made available for such purchase; provided that upon the death of a sole shareholder of a professional corporation, the personal representative of the estate of the deceased sole shareholder may elect to dissolve the professional corporation, by delivering for filing articles of dissolution signed by the personal representative and the surviving officer of the professional corporation. If the personal representative elects to dissolve the professional corporation, the personal representative may publish a notice to creditors.

(b) If the price for the shares of the corporation is not fixed by its articles of incorporation or bylaws or by private agreement, the corporation within six months after such death or thirty days after such disqualification or transfer, as the case

may be, shall make a written offer to pay for the shares at a specified price deemed by the corporation to be the fair value thereof as of the date of the death, disqualification, or transfer. The offer shall be given to the personal representative of the estate of a deceased shareholder or to the disqualified shareholder or transferee and shall be accompanied by a balance sheet of the corporation, as of the latest available date and not more than twelve months prior to the making of the offer, and a profit and loss statement of the corporation for the twelve-month period ended on the date of that balance sheet.

(c) If within thirty days after the date of the written offer from the corporation the fair value of the shares is agreed upon between the disqualified person and the corporation, payment therefor shall be made within sixty days, or such other period as the parties may fix by agreement, after the date of the offer, upon surrender of the certificate or certificates representing the shares. Upon payment of the agreed value the disqualified person shall cease to have any interest in the shares.

(d) If within such period of thirty days the disqualified person and the corporation do not so agree, then the corporation, within thirty days after receipt of written demand from the disqualified person given within sixty days after the date of the corporation's written offer or at its election at any time within such period of sixty days, shall file a petition in any court of competent jurisdiction in the circuit where the principal office of the corporation is located requesting that the fair value of the shares be found and determined. If the corporation fails to file a petition as provided in this subsection, the disqualified person may file a petition within sixty days after delivery of a written demand to the corporation. The disqualified person, wherever residing, shall be made a party to the proceeding as an action against the person's shares quasi in rem. A copy of the petition shall be served on the disqualified person, if a resident of this State, and shall be served by registered or certified mail on the disqualified person, if a nonresident. Service on nonresidents shall also be made by publication as provided by law. The jurisdiction of the court shall be plenary and exclusive. The disqualified person shall be entitled to judgment against the corporation for the amount of the fair value of the person's shares as of the date of death, disqualification, or transfer upon surrender to the corporation of the certificate or certificates representing the shares. The court, in its discretion, may order that the judgment be paid in such installments as the court may determine. The court, if it so

elects, may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof.

(e) The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable in all of the circumstances, from the date of death, disqualification, or transfer.

(f) The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of the costs and expenses may be apportioned and assessed as the court may deem equitable against the disqualified person if the court finds that the action of the disqualified person in failing to accept the offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for and reasonable expenses of the appraisers, but shall exclude the fees and expenses of counsel for and experts employed by any party; but if the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay therefor, or if no offer was made, the court in its discretion may award to the disqualified person such sum as the court may determine to be reasonable compensation to any expert or experts employed by the disqualified person in the proceeding.

(g) If a purchase, redemption, or transfer of the shares of a deceased or disqualified shareholder or of a transferee who is a disqualified person is not completed within ten months after the death of the deceased shareholder or five months after the disqualification or transfer, as the case may be, the corporation shall cancel the shares on its books and the disqualified person shall have no further interest as a shareholder in the corporation other than the person's right to payment for the shares under this section.

(h) Shares acquired by a corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor, as provided in this section, may be held and disposed of by the corporation as in the case of other treasury shares.

(i) This section shall not require the purchase of shares of a disqualified person where the period of disqualification is for less than five months from the date of disqualification or transfer.

(j) Any provision regarding purchase, redemption, or transfer of shares of a professional corporation contained in the articles of incorporation, bylaws, or any private agreement shall be specifically enforceable in the courts of this State.

(k) Nothing contained herein shall prevent or relieve a professional corporation from paying pension benefits or other deferred compensation for services rendered to or on behalf of a former shareholder as otherwise permitted by law.

(l) Under this section, unless otherwise stated, references to a "disqualified person" shall also be construed to include deceased shareholders and personal representatives of deceased shareholders. [L 1985, c 259, pt of §1; am L 1987, c 135, §116; am L 2001, c 129, §53; am L 2002, c 130, §74]

Cross References

Vexatious litigants, see chapter 634J.

" **§415A-11 Responsibility for professional services.** (a) Every individual who renders professional services as an employee of a professional corporation shall be liable for any negligent or wrongful act or omission in which the individual personally participates to the same extent as if the individual rendered the services as a sole practitioner. An employee of a professional corporation shall not be liable for the conduct of other employees unless the employee is at fault in appointing, supervising, or cooperating with the other employees.

(b) Every corporation whose employees perform professional services within the scope of their employment or of their apparent authority to act for the corporation shall be liable to the same extent as its employees.

(c) Except as otherwise provided by statute, if any corporation is liable under subsection (b), every shareholder of that corporation shall be liable to the same extent as though the shareholder were a partner in a partnership and the services giving rise to liability had been rendered on behalf of the partnership, unless the corporation has provided security for professional responsibility as provided in this subsection and the liability is satisfied to the extent contemplated by the insurance or bond which effectuates the security.

A professional corporation may provide security for professional responsibility by procuring insurance or a surety bond issued by an insurance company, or coverage under chapter 435E, or any combination thereof, as the corporation may elect. The minimum amount of security and requirements as to the form and coverage provided by the insurance policy or surety bond may be established for each profession by the licensing authority for the profession, and the minimum amount may be set to vary with the number of shareholders, the type of practice, or other variables deemed appropriate by the licensing authority. [L

1985, c 259, pt of §1; am L 1987, c 135, §117; am L 1988, c 122, §1]

" **§415A-12 Professional relationships; privileged communications.** (a) The relationship between an individual performing professional services as an employee of a professional corporation and a client or patient shall be the same as if the individual performed the services as a sole practitioner.

(b) The relationship between a professional corporation performing professional services and the client or patient shall be the same as between the client or patient and the individual performing the services.

(c) Any privilege applicable to communications between a person rendering professional services and the person receiving the services recognized under the laws of this State, whether statutory or deriving from common law, shall remain inviolate and shall extend to a professional corporation and its employees in all cases in which it shall be applicable to communications between an individual rendering professional services on behalf of the corporation and the person receiving the services. [L 1985, c 259, pt of §1; am L 1987, c 135, §118]

Cross References

Common law of the State, see §1-1.

Privileges under Hawaii Rules of Evidence, see §626-1, article V.

" **[\$415A-13] Voting of shares.** No proxy for shares of a professional corporation shall be valid unless it shall be given to a qualified person. A voting trust with respect to shares of a professional corporation shall not be valid. [L 1985, c 259, pt of §1]

" **§415A-14 Directors and officers.** Not less than one-half of the directors of a professional corporation and all of the officers, other than the secretary and the treasurer, shall be qualified persons with respect to the corporation. At least one director shall be a resident of this State. [L 1985, c 259, pt of §1; am L 1987, c 135, §119]

" **[\$415A-14.5] Incorporators.** One or more individuals may act as the incorporator or incorporators of a professional corporation by delivering articles of incorporation to the director for filing. [L 1987, c 135, §107]

" **§415A-14.6 Articles of incorporation.** (a) The articles of incorporation shall set forth:

- (1) A corporate name for the corporation that satisfies the requirements of section 415A-8;
- (2) The profession or professions that the corporation shall be authorized to practice and any other purpose allowed by the licensing laws and rules of this State;
- (3) The mailing address of the corporation's initial principal office and the information required by section 425R-4(a);
- (4) The number of directors constituting the initial board of directors and the names and addresses of the individuals who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualified;
- (5) The name, title, and address of each officer; and
- (6) The number of shares the corporation is authorized to issue, and if the shares are to be divided into classes, the number of shares of each class.

(b) The articles of incorporation may set forth any of the matters specified in section 414-32(b).

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter or chapter 414. [L 1987, c 135, §109; am L 1988, c 372, §5; am L 2000, c 219, §26; am L 2002, c 40, §46 and c 130, §75; am L 2012, c 58, §12]

" **§415A-14.7 Filing of documents, effective date.** The filing of documents required by this chapter to be delivered to the director for filing, and the effectiveness thereof, shall be governed by sections 414-11(d), (e), (f), (g), and (i), 414-14, and 414-16. [L 1987, c 135, §110; am L 2002, c 40, §47]

" **§415A-14.8 Organization of corporation.** After incorporation, the initial director or directors, as the case may be, shall complete the organization of the corporation as provided in section 414-35. [L 1987, c 135, §111; am L 1988, c 373, §11; am L 2002, c 40, §48]

" **§415A-15 Amendments to articles of incorporation.** A personal representative, guardian, conservator, or receiver of the estate of a shareholder of a professional corporation who holds all of the outstanding shares of the corporation may amend the articles of incorporation by signing a written consent to the amendment. Articles of amendment so adopted shall be executed on behalf of the corporation by the personal representative, guardian, conservator, or receiver and by the

surviving officer, and verified on oath by one of the persons signing the articles, and shall set forth:

- (1) The name of the corporation;
- (2) The amendments so adopted which shall be identified by the numerical or other designation thereof in the articles of incorporation;
- (3) The date of adoption of the amendment by the personal representative, guardian, conservator, or receiver;
- (4) The number of shares outstanding; and
- (5) The number of shares held by the personal representative, guardian, conservator, or receiver. [L 1985, c 259, pt of §1; am L 1987, c 135, §120]

" **§415A-16 Merger and share exchange.** A professional corporation involved in a merger or share exchange shall be subject to the provisions for mergers and share exchanges set forth in chapter 414. [L 1985, c 259, pt of §1; am L 2002, c 41, §17]

" **§415A-16.5 Conversion into and from professional corporations.** (a) A professional corporation may adopt a plan of conversion and convert to any other entity if:

- (1) The board of directors and shareholders of the professional corporation approve a plan of conversion in the manner prescribed by section 414-313 and the conversion is treated as a merger to which the converting entity is a party and not the surviving entity;
- (2) The conversion is permitted by and complies with the laws of the state or country in which the converted entity is to be incorporated, formed, or organized; and the incorporation, formation, or organization of the converted entity complies with such laws;
- (3) At the time the conversion becomes effective, each shareholder of the converting entity, unless otherwise agreed to by that shareholder, owns an equity interest or other ownership interest in, and is a shareholder, partner, member, owner, or other security holder of, the converted entity;
- (4) The shareholders of the professional corporation, as a result of the conversion, shall not become personally liable without the shareholders' consent, for the liabilities or obligations of the converted entity; and
- (5) The converted entity is incorporated, formed, or organized as part of or pursuant to the plan of conversion.

(b) Any other entity may adopt a plan of conversion and convert to a professional corporation if the conversion is permitted by and complies with the laws under which the other entity is incorporated, formed, or organized.

(c) A plan of conversion shall set forth:

- (1) The name of the converting entity and the converted entity;
- (2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;
- (3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized; and
- (4) The manner and basis of converting the shares or other forms of ownership of the converting entity into shares or other forms of ownership of the converted entity, or any combination thereof.

(d) A plan of conversion may set forth any other provisions relating to the conversion that are not prohibited by law, including without limitation the initial bylaws and officers of the converted entity.

(e) After a conversion of a professional corporation is approved, and at any time before the conversion becomes effective, the plan of conversion may be abandoned by the professional corporation without shareholder action and in accordance with the procedures set forth in the plan of conversion or, if these procedures are not provided in the plan, in the manner determined by the board of directors. If articles of conversion have been filed with the director but the conversion has not become effective, the conversion may be abandoned if a statement, executed on behalf of the converting entity by an officer or other duly authorized representative and stating that the plan of conversion has been abandoned in accordance with applicable law, is filed with the director prior to the effective date of the conversion. If the director finds that the statement satisfies the requirements provided by law, the director, after all fees have been paid shall:

- (1) Stamp the word "Filed" on the statement and the date of the filing;
- (2) File the document in the director's office; and
- (3) Issue a certificate of abandonment to the converting entity or its authorized representatives.

(f) Once the statement provided in subsection (e) is filed with the director, the conversion shall be deemed abandoned and shall not be effective. [L 1999, c 280, pt of §2; am L 2001, c 129, §54; am L 2002, c 40, §49]

" **§415A-16.6 Articles of conversion.** (a) If a plan of conversion has been approved in accordance with section 415A-16.5 and has not been abandoned, articles of conversion shall be executed by an officer or other duly authorized representative of the converting entity and shall set forth:

- (1) A statement certifying the following:
 - (A) The name, type of entity, and state or country of incorporation, formation, or organization of the converting and converted entities;
 - (B) That a plan of conversion has been approved in accordance with section 415A-16.5;
 - (C) That an executed plan of conversion is on file at the principal place of business of the converting entity and stating the address thereof; and
 - (D) That a copy of the plan of conversion shall be furnished by the converting entity prior to the conversion or by the converted entity after the conversion on written request and without cost, to any shareholder of the converting entity or the converted entity;
- (2) If the converting entity is a professional corporation, the number of shares outstanding and, if the shares of any class or series are entitled to vote as a class, the designation and number of outstanding shares of each such class or series;
- (3) If the converting entity is a professional corporation, the number of shares outstanding that voted for and against the plan and, if the shares of any class or series are entitled to vote as a class, the number of shares of each such class or series that voted for and against the plan; and
- (4) If the converting entity is another entity, a statement that the approval of the plan of conversion was duly authorized and complied with the laws under which it was incorporated, formed, or organized.

(b) The articles of conversion shall be delivered to the director. The converted entity, if a domestic corporation, domestic professional corporation, domestic nonprofit corporation, general partnership, limited partnership, or domestic limited liability company, shall attach a copy of its respective registration documents with the articles of conversion.

(c) If the director finds that the articles of conversion satisfy the requirements provided by law, and that all required documents are filed, the director, after all fees have been paid shall:

- (1) Stamp the articles of conversion and include the date of the filing;
- (2) File the document in the director's office; and
- (3) Issue a certificate of conversion to the converted entity or its authorized representatives. [L 1999, c 280, pt of §2; am L 2001, c 129, §55; am L 2009, c 23, §7]

" **§415A-16.7 REPEALED.** L 2003, c 124, §103.

" **§415A-16.8 Effect of conversion.** When a conversion becomes effective:

- (1) The converting entity shall continue to exist without interruption but in the organizational form of the converted entity;
- (2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;
- (3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion;
- (4) The rights of creditors of the converting entity shall continue against the converted entity and shall not be impaired or extinguished by the conversion;
- (5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity without any need for substitution of parties;
- (6) The shares and other forms of ownership in the converting entity that are to be converted into shares or other forms of ownership in the converted entity as provided in the plan of conversion shall be converted, and if the converting entity is a professional corporation, the former shareholders of the professional corporation shall be entitled only to the rights provided in the plan of conversion or to the rights to dissent under section 415-80;
- (7) A shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that the shareholder, partner, member, or other owner:
 - (A) Agreed in writing to be liable for the debts or obligations;

- (B) Was liable under applicable law prior to the effective date of the conversion for the debts or obligations; or
 - (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other business owner of the converted entity;
- (8) If the converted entity is a foreign corporation or other business entity, incorporated, formed, or organized under a law other than the laws of this State, the converted entity shall file with the director:
- (A) An agreement that the converted entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of the converting domestic corporation;
 - (B) An irrevocable appointment of a resident of this State, including the street address, as its agent to accept service of process in any such proceeding; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting shareholder, partner, member, or other owner to receive payment for their interest against the converted entity; and
- (9) If the converting entity is a professional corporation, part XIV of chapter 414 shall apply as if the converted entity were the survivor of a merger with the converting entity. [L 1999, c 280, pt of §2; am L 2006, c 235, §9]

Note

Section 415-80 referred to in text is repealed.

" **§415A-17 Termination of professional activities.** If a professional corporation shall cease to render professional services, it shall amend its articles of incorporation to delete from its stated purposes the rendering of professional services and to conform to the requirements of chapter 414. After the amended articles of incorporation have been delivered to the director for filing, the corporation then may continue in existence as a corporation under chapter 414, and shall no longer be subject to this chapter. [L 1985, c 259, pt of §1; am L 1987, c 135, §121; am L 2002, c 40, §50]

" **§415A-18 Administrative dissolution; expiration; reinstatement.** (a) The director may commence a proceeding to dissolve a professional corporation administratively if the corporation fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual report for a period of two years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required under this chapter.

Before the director may declare a professional corporation dissolved, the director shall give notice of any grounds for dissolution by mailing the notice to the professional corporation at its last known address appearing in the records of the director.

(b) If the professional corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the director that each ground determined by the director does not exist within sixty days after the date of mailing of the director's written notice, the director shall administratively dissolve the corporation by signing a decree of dissolution that recites any grounds for dissolution and its effective date. The decree shall be filed in the director's office. The administrative dissolution of a corporation shall not terminate the authority of its registered agent.

(c) A professional corporation that is administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 414-385 and notify claimants under sections 414-386 and 414-387.

(d) In each case where the director has given a professional corporation notice of intention to dissolve the corporation on the grounds that its articles of incorporation have been procured through fraud, the corporation shall be entitled to petition for an administrative hearing under chapter 91 and shall give written notice to the director thereof, before the director may declare the corporation dissolved under subsection (a).

(e) A professional corporation that is administratively dissolved under this section may apply to the director for reinstatement within two years after the effective date of dissolution. The application shall:

- (1) Recite the name of the professional corporation and the effective date of its administrative dissolution;
- (2) Contain all reports due and unfiled;
- (3) Contain the payment of all delinquent fees and penalties; and

- (4) Contain a certificate from the department of taxation indicating that all taxes owed by the professional corporation have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.

Within the applicable reinstatement period, should the name of the professional corporation, or a name substantially identical thereto, be registered or reserved by another entity or if that name or a name substantially identical is registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the administratively dissolved professional corporation pursuant to the amendment provisions of this chapter.

(f) If a professional corporation's period of duration specified in its articles of incorporation has expired, the professional corporation continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 414-385 and notify claimants under sections 414-386 and 414-387.

(g) The professional corporation, at any time within two years of expiration of its period of duration, may amend its articles of incorporation to extend its period of duration, and upon the amendment, the professional corporation may resume carrying on its business as if the expiration had never occurred; provided that, if the name of the professional corporation or a name substantially identical thereto is registered or reserved by another entity, or if that name or a name substantially identical is registered as a trade name, trademark, or service mark, then the extension of its period of duration shall be allowed only upon the registration of a new name by the professional corporation pursuant to the amendment provisions of this chapter. [L 1985, c 259, pt of §1; am L 1987, c 135, §122; am L 1996, c 92, §9; am L 1998, c 2, §98; am L 1999, c 249, §15; am L 2000, c 219, §27; am L 2002, c 40, §51 and c 130, §77; am L 2004, c 121, §21; am L 2006, c 235, §10; am L 2008, c 54, §7; am L 2009, c 23, §8]

" **[§415A-18.5] Trustees or receivers for dissolved professional corporations; appointment; powers; duties.** (a) When any professional corporation organized and authorized to issue shares under the laws of this State shall be or shall have been dissolved or shall cease or shall have ceased to exist, the circuit court, upon application of any creditor, stockholder, or director of the corporation, or any other person who shows good cause therefor, and upon a finding that the persons responsible for settling the unfinished business and winding up the affairs

of the corporation either are not diligently pursuing such obligations, or cannot be found or otherwise are not available, may either appoint one or more of the directors of the corporation to be trustees or appoint one or more persons to be receivers of and for the corporation, to do all acts that are necessary for the final settlement of the unfinished business of the corporation. The powers of the trustees or receivers shall be effective for the time period determined by the circuit court.

(b) The relief provided in this section shall be in addition to, and shall not limit or diminish, any remedies otherwise available under the common law or other state or federal statutes or rules. In the event of a conflict between this section and any common law or other state statutes or rules on the subject, the more beneficial provisions favoring the applicant shall prevail. [L 2008, c 54, §1]

" **§§415A-19 to 21 REPEALED.** L 1987, c 135, §§123 to 125.

" **§415A-22 Annual report.** (a) The annual report of each professional corporation shall be delivered to the director for filing and shall set forth:

- (1) The name of the corporation;
- (2) The profession or professions that it is or are actually engaged in;
- (3) The mailing address of its principal office, the street address of its registered office in this State, and the name of its registered agent at its registered office in the State;
- (4) The names and addresses of the directors and officers of the corporation;
- (5) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, if any;
- (6) A statement of the aggregate number of shares issued by the corporation, itemized by classes, if any; and
- (7) A statement that all of the shareholders, not less than one-half of the directors, and all of the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

(b) The annual report shall be filed within the time periods prescribed in subsections (c) and (d).

(c) Notwithstanding any of the provisions of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required may be voluntarily filed with the department

director if the annual report complies with the requirements of this section.

(d) Effective January 1, 2003, for professional corporations whose date of incorporation in this State falls between:

- (1) January 1 and March 31, an annual report shall be filed on or before March 31 of each year and shall reflect the state of the corporation's affairs as of January 1 of the year when filed;
- (2) April 1 and June 30, an annual report shall be filed on or before June 30 of each year and shall reflect the state of the corporation's affairs as of April 1 of the year when filed;
- (3) July 1 and September 30, an annual report shall be filed on or before September 30 of each year and shall reflect the state of the corporation's affairs as of July 1 of the year when filed; and
- (4) October 1 and December 31, an annual report shall be filed on or before December 31 of each year and shall reflect the state of the corporation's affairs as of October 1 of the year when filed;

provided that if a professional corporation is incorporated in the same year in which the annual report is due, the professional corporation shall not be required to file an annual report for that year. Thereafter, the professional corporation shall comply with the requirements of this section. [L 1985, c 259, pt of §1; am L 1987, c 135, §126; am L 2000, c 219, §28; am L 2002, c 130, §78; am L 2003, c 124, §42]

" **§415A-23 REPEALED.** L 1987, c 135, §127.

" **§415A-24 Interrogatories by director.** The director may direct to any professional corporation organized to practice a profession within the jurisdiction of the director and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable the director to ascertain whether the corporation has complied with all of the provisions of this chapter applicable to the corporation. The interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the director, and the answers thereto shall be full and complete and shall be made in writing and under oath. If the interrogatories are directed to an individual, they shall be answered by the individual, and if directed to a professional corporation, they shall be answered by the president, vice president, secretary, or assistant secretary thereof. The director shall certify to the attorney general, for any action

the attorney general may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this chapter.

Interrogatories directed to an individual or a professional corporation by the director and the answers thereto shall not be open to public inspection nor shall the director disclose any facts or information obtained therefrom except insofar as the director's official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceeding or any other action by this State. [L 1985, c 259, pt of §1; gen ch 1985; am L 1987, c 135, §128; am L 1996, c 13, §9]

" **§415A-25 Penalties.** (a) Each professional corporation that fails or refuses to answer truthfully within the time prescribed by this chapter interrogatories directed to the professional corporation in accordance with this chapter by the director shall be guilty of a class C felony.

(b) Each officer or director of a professional corporation who fails or refuses within the time prescribed by this chapter to answer truthfully and fully interrogatories directed to that officer or director in accordance with this chapter by the director, or who signs any articles, statement, report, application, or other document filed with the director which is known to that officer or director to be false in any material respect, shall be deemed to be guilty of a class C felony. [L 1985, c 259, pt of §1; am L 1987, c 135, §129]

" **§415A-26 REPEALED.** L 1987, c 135, §130.

" **§415A-27 Application of business corporation act.** The provisions of chapter 414, shall apply to professional corporations, except to the extent that the provisions are inconsistent with this chapter. [L 1985, c 259, pt of §1; am L 1987, c 135, §131; am L 2002, c 40, §52]

" **§415A-28 Application to existing corporations.** (a) This chapter shall apply to all existing professional corporations organized under any general act of this State which is repealed by this chapter.

(b) Any corporation organized under any act of this State which is not repealed hereby may become subject to the provisions of this chapter by delivering to the director duly executed articles of amendment stating that the corporation elects to become subject to this chapter and containing the amendment of its corporate name or purposes as may be required to comply with this chapter.

(c) This chapter shall not apply to any corporation now in existence or hereafter organized under any act of this State which is not repealed hereby unless the corporation voluntarily becomes subject to this chapter as provided in this chapter, and nothing contained in this chapter shall alter or affect any existing or future right or privilege permitting or not prohibiting performance of professional services through the use of any other form of business organization. Nothing in this chapter shall affect the validity of any action taken by any corporation, or shall impair or affect the validity of any provision of the articles of incorporation or bylaws adopted by any corporation prior to July 1, 1987. [L 1985, c 259, pt of §1; am L 1987, c 135, §132; am L 1996, c 13, §10]

" **[\$415A-29] Reservation of power.** The legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to this chapter, and the legislature shall have power to amend, repeal, or modify this chapter at pleasure. [L 1985, c 259, pt of §1]

" **[\$415A-30] Effect of repeal of prior acts.** The repeal of a prior act by this chapter shall not affect the validity of any provisions of articles of incorporation and bylaws which were adopted, any right accrued or established, or any liability or penalty incurred, under the provisions of such act, prior to the repeal thereof. [L 1985, c 259, pt of §1]

Cross References

Effect of repeal on accrued rights, see §1-10.

" **[\$415A-31] Effect of invalidity of part of this chapter.** If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, or part of this chapter, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this chapter, but the effect thereof shall be confined to the clause, sentence, paragraph, section, or part of this chapter so adjudged to be invalid or unconstitutional. [L 1985, c 259, pt of §1]

Cross References

Severability, see §1-23.