

CHAPTER 419
CORPORATIONS SOLE FOR ECCLESIASTICAL PURPOSES

Section

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Cross References

Uniform prudent management of institutional funds act, see chapter 517E.

" **§419-1 Formation of corporation sole for ecclesiastical purposes.** A nonprofit corporation sole may be formed hereunder by the bishop, chief priest, presiding elder, or other presiding officer of any church, for the purposes of administering and managing the affairs, property, and temporalities of the church, in the district within which the bishop, chief priest, presiding elder, or other presiding officer has ecclesiastical jurisdiction. [L Sp 1941, c 58, pt of §1(6765); RL 1945, §8401; RL 1955, §175-1; HRS §419-1]

Case Notes

To be a corporation sole, it must be created under statute. 16 H. 345.

" **§419-2 Articles of incorporation; contents.** (a) Articles of incorporation under this chapter shall be delivered to the director for filing, certified and executed by the bishop, chief priest, presiding elder, or other presiding officer forming the corporation sole and shall set forth:

- (1) The name of the corporation;
- (2) The name and address of the officer forming the corporation, the office which the officer holds in the church, and that the officer is duly authorized by the rules, regulations, or discipline of the church to take the action;
- (3) The boundaries of the district subject to the ecclesiastical jurisdiction of the officer forming the corporation sole, in accordance with the rules, regulations, or discipline of the church;
- (4) The place of the principal office of the corporation sole, which shall be in the State;
- (5) The term for which the corporation sole is organized, which may be perpetual;
- (6) The manner in which any vacancy occurring in the office of the bishop, chief priest, presiding elder, or other presiding officer forming the corporation sole is required to be filled by the rules, regulations, or constitution of the church;
- (7) Additional powers to be set forth in its articles, in accordance with section 414D-52;

(8) Any lawful provision for the regulation of the affairs of the corporation sole, including restrictions upon the power to amend all or any part of the articles; and

(9) That the corporation is not organized for profit.

(b) If any articles of incorporation presented to the director under this chapter are not in conformity with the requirements of this section the director shall return the same to the incorporator specifying wherein the same fails to conform with this section and the incorporator may amend the articles and present them so amended. If the articles of incorporation are in conformity with law, the director shall file the articles of incorporation. [L Sp 1941, c 58, pt of §1(6766); RL 1945, §8402; RL 1955, §175-2; am L Sp 1959 2d, c 1, §15; am L 1963, c 114, §3; HRS §419-2; am L 1980, c 259, §15; am L 1982, c 204, §8; am L 1983, c 124, §17; gen ch 1985; am L 1988, c 373, §13; am L 2002, c 40, §53]

" **§419-3 Powers of corporation sole.** (a) Every corporation sole formed under this chapter shall have the powers set forth in section 414D-52.

(b) Every such corporation shall have continuity of existence, notwithstanding vacancies in the incumbency thereof, and during the period of any vacancy, shall have the same capacity and right to receive and take any gift, bequest, devise, or conveyance of property, either as grantee for its own use, or as a trustee (where the trusteeship is within its corporate purposes and subject to removal from such trusteeship as provided by law), and to be or be made the beneficiary of a trust, as though there were no vacancies.

(c) No agency created by a corporation sole by a written instrument which, in express terms, provides that the agency thereby created shall not be terminated by a vacancy in the incumbency of the corporation, shall be terminated or affected by the death of the incumbent of the corporation or by a vacancy in the incumbency thereof, however caused. [L Sp 1941, c 58, pt of §1(6767); RL 1945, §8403; RL 1955, §175-3; HRS §419-3; am L 1988, c 370, §1; am L 2002, c 40, §54]

" **§419-4 Amendment of articles.** Subject to the provisos set forth in this section, and subject to any lawful restrictions upon the power to amend the articles of incorporation sole filed under section 419-2, the incumbent of the corporation may at any time amend the articles of incorporation by changing its name, the term of its existence, the boundaries of the district subject to its jurisdiction, the place of its principal office, the manner of filling any vacancy in the incumbency thereof, its

powers, or any provision of the articles for the regulation of the affairs of the corporation (except restrictions upon the power to amend the articles), and may, by amendment of the articles, make provision for any act or thing for which provision is authorized in original articles of incorporation sole formed under this chapter.

The incumbent of the corporation sole shall subscribe and verify a certificate which shall set forth the amendment either by stating that the articles have been amended to read as set forth in the certificate in full or by stating that any provision or provisions of the articles, which shall be identified by the numerical or other designation or designations thereof in the articles or by stating the wording thereof, has or have been amended to read as set forth in the certificate. The certificate shall further state that the amendment has been duly authorized by the rules, regulations, or discipline of the church of which the incumbent is an officer; provided that no amendment shall confer any other or greater powers or privileges than could lawfully be conferred or obtained in the original articles; provided further that no amendment shall become effective unless the same is allowed by the director of commerce and consumer affairs. [L Sp 1941, c 58, pt of §1(6768); RL 1945, §8404; RL 1955, §175-4; am L Sp 1959 2d, c 1, §15; am L 1963, c 114, §3; HRS §419-4; am L 1980, c 259, §16; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 1988, c 373, §14]

" **§419-5 Name of incumbent; change in incumbency.** There shall be filed, with the articles of incorporation, a statement duly certified and executed, which shall state the name and address of the person who is to be its incumbent, to which shall be appended a duly attested copy of the certificate of appointment or other document through which the person succeeded to the ecclesiastical office by virtue of which the person became entitled to be the incumbent of the corporation sole. Whenever a change in the incumbency of the corporation occurs, the new incumbent, within thirty days after the new incumbent has become the incumbent, shall file with the director of commerce and consumer affairs a like certificate with like proof of the new incumbent's title to the office. [L Sp 1941, c 58, pt of §1(6769); RL 1945, §8405; RL 1955, §175-5; am L Sp 1959 2d, c 1, §15; am L 1963, c 114, §3; HRS §419-5; am L 1982, c 204, §8; am L 1983, c 124, §17; gen ch 1985; am L 1988, c 373, §15]

" **§419-6 Distribution of assets; inspection of books.** Except upon liquidation of the property of the corporation in case of dissolution, no part of the assets, income, or earnings of the corporation shall be withdrawn from or sent out of the

State, unless the remaining assets of the corporation shall then equal in value twice the amount of the indebtedness of the corporation.

The director of commerce and consumer affairs shall at all times have access to the books of the corporation. [L Sp 1941, c 58, pt of §1(6769A); RL 1945, §8406; RL 1955, §175-6; am L Sp 1959 2d, c 1, §15; am L 1963, c 114, §3; HRS §419-6; am L 1982, c 204, §8; am L 1983, c 124, §17]

" **§419-7 Duration.** If a corporation sole was dissolved due to the expiration of its period of duration, the corporation sole, at any time within two years of such dissolution, may amend its articles of incorporation to extend its period of duration; provided that if the name of the corporation sole, or a name substantially identical is registered or reserved by another entity, or if such name or a name substantially identical is registered as a trade name, trademark, or service mark, the extension of corporate existence shall be allowed only upon the registration of a new name by the corporation sole pursuant to section 419-4. [L Sp 1941, c 58, pt of §1(6769B); RL 1945, §8407; RL 1955, §175-7; am L Sp 1959 2d, c 1, §15; am L 1963, c 114, §3; HRS §419-7; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 1988, c 373, §16; am L 2004, c 121, §22]

" **§419-8 Dissolution.** A corporation formed under this chapter may be dissolved, voluntarily or involuntarily, in the manner provided in part XIII of chapter 414D; provided that:

- (1) In lieu of the certificate and vote therein required for a voluntary dissolution, the incumbent of the corporation sole shall execute, subscribe, and verify a declaration of dissolution which shall set forth the name of the corporation, the reason for its dissolution or winding up, and that the dissolution has been duly authorized by the church, to administer the affairs, property, and temporalities of which the corporation was organized, and the director of commerce and consumer affairs shall be satisfied that the dissolution has been duly authorized;
- (2) In lieu of the certificate of an officer, director, or manager of the corporation, therein required for the involuntary dissolution of a corporation which has ceased to have any assets and has failed to function, the certificate may be made by any authorized officer of the church, to administer the affairs, property, and temporalities of which the corporation was organized;

- (3) In lieu of the directors or managers of the corporation the incumbent shall be a trustee to wind up the corporation, unless some other person or persons are appointed as therein provided;
- (4) The church, to administer the affairs, property, and temporalities of which the corporation was organized, shall stand in the place and stead of the stockholders, and may be represented in court by any authorized officer thereof or trustee acting in its behalf; the remaining assets shall be distributed to such church or to a trustee or trustees in its behalf, or in such other manner as may be decreed by the circuit court of the judicial circuit in which the dissolved corporation had its principal office at the date of dissolution; and the trustee or trustees in dissolution, the director, the attorney general, or any person connected with the church, may file a petition for the determination of the manner of distribution of the remaining assets, or for the appointment of a trustee or trustees to act in behalf of the church; and
- (5) In lieu of the officers of the corporation the incumbent shall represent the corporation with respect to the required tax clearance. [L Sp 1941, c 58, pt of §1(6769C); RL 1945, §8408; RL 1955, §175-8; am L Sp 1959 2d, c 1, §15; am L 1963, c 114, §3; HRS §419-8; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 1988, c 370, §2; am L 2002, c 40, §55]

" **§419-9 Corporations sole heretofore formed; general laws.**

(a) Any corporation sole heretofore formed and existing under the laws of this State for ecclesiastical purposes may elect to continue its existence under this chapter by filing an application for amendment of its charter in the manner and form provided for an application for an original charter, together with the required certificates as to the incumbency of the corporation. If such amendment is allowed by the director of commerce and consumer affairs, this chapter thereupon shall apply to such corporations sole the same as to corporations formed under this chapter.

(b) Any charter or amended charter granted or corporation created or existing under the authority of this chapter shall be subject to all general laws enacted in regard to corporations. [L Sp 1941, c 58, pt of §1(6769D); RL 1945, §8409; RL 1955, §175-9; am L Sp 1959 2d, c 1, §15; am L 1963, c 114, §3; HRS §419-9; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 2004, c 121, §23]