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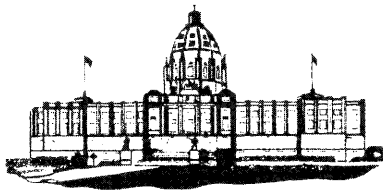
# RESEARCH REPORT

## THE NEW MINNESOTA NONPROFIT CORPORATION ACT

Reporter's Notes

Prepared by  
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July 1990

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## TABLE OF CONTENTS

Preface to Reporter's Notes .....	1
Citation .....	3
Definitions .....	3
Application .....	6
Incorporation; Articles .....	10
Powers .....	20
Organization; Bylaws .....	22
Board .....	24
Officers .....	36
Members .....	40
Loans; Obligations .....	56
Merger; Consolidation; Transfer .....	58
Dissolution .....	62
Extension .....	75
Attorney General .....	76
Corporate Registration .....	79
Actions Against Corporations .....	82
Special Provisions .....	83

## PREFACE TO REPORTER'S NOTES

Enactment of the 1981 revision of the Minnesota Business Corporation Act prompted a number of attorneys practicing in the area of nonprofit corporation law to begin studying the need for a similar revision of the Minnesota Nonprofit Corporation Act contained in Minnesota Statutes, chapter 317. The existing law had not undergone any significant revision since its enactment in 1951. In many respects it was outdated, incomplete, inconsistent, and ambiguous. Most practitioners recognized the need for a comprehensive technical and substantive revision of the law to better reflect the modern face of nonprofit corporations and create a comprehensive statute able to accommodate the variety of functions and activities in which nonprofit corporations participate.

In 1983 and 1984, the Nonprofit Corporations Committee of the Minnesota State Bar Association Section of Corporation, Banking and Business Law began work on the project. However, because of the substantial amount of work involved in revising the law, the Section decided to seek legislative support. The Minnesota Senate undertook the project as an in-house policy study, conducted in consultation with a study group consisting of representatives of the Bar Association and other practitioners involved in nonprofit corporation law.

From 1986 to 1989, the study group held a series of working meetings to discuss and revise drafts of a new nonprofit corporation act. Various drafts and alternative approaches were circulated to a mailing list of interested persons. The final product was enacted by the Minnesota Legislature in the 1989 session (Laws 1989, chapter 304; also *see* Laws 1989 First Special Session, chapter 2, section 7). The study group met in the fall of 1989 to discuss further refinements and housekeeping amendments to the new law, which were enacted in 1990 (Laws 1990, chapter 488).

The new Minnesota Nonprofit Corporation Act appears in Minnesota Statutes, chapter 317A. It is a comprehensive substantive and stylistic revision of the Minnesota statutes governing the organization and operation of nonprofit corporations. The act follows the general organizational format and statutory coding of the Minnesota Business Corporation Act contained in chapter 302A (MBCA). To the extent appropriate, a number of substantive provisions also are derived from the business corporation act, as well as the former nonprofit corporation act in Minnesota Statutes, chapter 317. The other major sources are the American Bar Association Revised Model Nonprofit Corporation Act adopted in 1987 ("Model Act") and an article from the Hamline Law School Journal of Public Law, Volume 5 (1984), titled "Proposed Nonprofit Corporation Act: Starting Point for Discussion ("Hamline Article").

The format of these notes is modeled after the Reporter's Notes of Bert Black for the Minnesota Business Corporation Act. Each section includes the source, former Minnesota provision, change from former law and, in most cases, general comment. The general comment frequently refers to the MBCA notes, since this is the source for many provisions. While there are obvious fundamental differences between business and nonprofit corporations, particularly with respect to the functions and roles of shareholders and members within the different legal entities, there are many general operational provisions that are similar, if not identical. The comments on the MBCA should be helpful in interpreting and applying the new Minnesota Nonprofit Corporation Act.

This project could not have been completed without the invaluable expertise and insight of the members of the study group who devoted considerable time and effort to ensure its success. Many attorneys and individuals involved in nonprofit corporations participated in the meetings and reviewed and commented on the drafts. I particularly wish to thank Patrick Plunkett, who also chaired the Bar Association Nonprofit Corporations Committee, John Harris, and Paul Torgerson, for their input as private practitioners. In addition, Bert Black, Director of the Business Services Division of the Office of the Secretary of State of Minnesota, who also served as reporter for the Minnesota Business Corporation Act, and Sheila Fishman, Manager of the Charities Division of the Office of the Attorney General of Minnesota, provided special administrative and regulatory expertise on behalf of the public sector interest in nonprofit corporations.

While passage of the new Minnesota Nonprofit Corporation Act is a major step, the continuing vitality of the law depends on ongoing review of the statutes in light of the changing needs and activities of nonprofit corporations in Minnesota. In addition, like any major legislative revision of a body of law, there are a number of details and nuances of the law that may need to be worked out following its enactment as the law is actually put into practice. This kind of input and review will be essential to the future success of the new act.

Kathleen E. Pontius, Senate Counsel  
Reporter  
July 1, 1990

## CITATION

### SECTION 317A.001: CITATION

## DEFINITIONS

### SECTION 317A.011: DEFINITIONS

#### SOURCE:

The definitions are derived from former law, the Minnesota Business Corporation Act (MBCA), and the Hamline Article.

#### FORMER MINNESOTA PROVISIONS:

Minnesota Statutes, section 317.02.

#### CHANGE FROM FORMER LAW:

The following terms are new: "filed with the Secretary of State," "good faith," "legal representative," "members with voting rights," "officer," "organization," "registered office," "related organization," and "signed." Most of the new definitions are included to conform to terms in the MBCA, to clarify terms that were used previously but not defined, or to define new terms.

Some of the former definitions are modified. For example, the definition of "corporation" combines the former definitions of "corporation" and "nonprofit corporation." Modifications are made in the definitions of "address" and "notice." The term "board of directors" or "board" is used instead of "directors."

#### GENERAL COMMENT:

Subdivision 2 (Address). This definition is based on the former definition in section 317.02, subdivision 13, and the definition in the MBCA in section 302A.011, subdivision 3, with the changes adopted in 1989 (*see* Laws 1989, chapter 236). The address must include the zip code. In addition, in the case of a registered office, the address will be the mailing address and the actual office location, instead of the office address. This will accommodate the variety of mailing addresses of corporations, particularly in rural areas, where the address may be descriptive or may be a rural route box.

Subdivision 3 (Articles). This definition is very similar to the MBCA definition in section 302A.011, subdivision 4, except that certain documents relating

to shareholders are not included (since they would not be applicable to a nonprofit corporation) and articles of consolidation are included.

Subdivision 4 (Board of Directors). This definition is a variation of former law in section 317.02, subdivision 9, which defined "directors," and is based on the Hamline Article. The most important point is that the board is described in terms of its function rather than its name. Nonprofit corporations may frequently use a different name to identify their directors, such as "trustees." Regardless of how they are identified, they will still be considered the board of directors.

Subdivision 5 (Bylaws). This definition is identical to former law in section 317.02, subdivision 10.

Subdivision 6 (Corporation). This definition combines the definitions in former law in sections 317.02, subdivisions 2 and 3, for "corporation" and "nonprofit corporation." The general term "governed by this chapter" includes all corporations that are incorporated under the chapter, have elected to come under all or part of the chapter, or are in any other way governed by the chapter.

New language is included allowing a nonprofit corporation to pay dividends to a government agency, in addition to other nonprofit corporations. See the discussion under section 317A.403, dealing with membership certificates.

Subdivision 7 (Director). This is taken from the MBCA, section 302A.011, subdivision 9.

Subdivision 8 (Filed With the Secretary of State). This is taken from the MBCA, section 302A.011, subdivision 11.

Subdivision 9 (Foreign Corporation). This is taken from the MBCA, section 302A.011, subdivision 12, and former law in section 317.02, subdivision 4, except the references to the purpose for which a corporation may be formed are eliminated.

Subdivision 10 (Good Faith). This is taken from the MBCA, section 302A.011, subdivision 13. See the reporters notes to the MBCA, which indicate that this is derived from Minnesota Statutes, section 336.1-201(19) (Minnesota UCC). The UCC comments to that section are reproduced in the MBCA.

Subdivision 11 (Legal Representative). This is taken from the MBCA, section 302A.011, subdivision 16.

Subdivision 12 (Member). This is taken from former law in section 317.02, subdivision 11, with some modification. Language is included similar to the language in the definition of "board" to indicate that a person is a member regardless of how the person is identified, again addressing the diversity of nonprofit organizations.

Subdivision 13 (Members With Voting Rights). This is new, and makes it clear that a reference to members with voting rights means the members who have voting rights with respect to the purpose or matter involved. It is possible that members may have voting rights for some but not all purposes, or that different classes may have different voting rights. See the discussion under section 317A.401, the general provisions dealing with members.

Subdivision 14 (Notice). This is taken from the MBCA, section 302A.011, subdivision 17, with some modification, and the Model Act, section 1.41 (h). In paragraph (b), clause (1), notice to an officer or member could be given at the address of the person in the corporate records. This language is not contained in the MBCA. With this exception, paragraph (b), clauses (1) to (5), are based on the MBCA. Clause (6) contains a catch-all provision from the Model Act under which notice also may be given if it is fair and reasonable when all the circumstances are considered. This reflects the fact that nonprofit corporations may use more informal notice methods that may be appropriate under certain circumstances. Clause (1) to (5) provide a "safe harbor" provision, but this does not preclude other reasonable methods of notice.

Subdivision 15 (Officer). This is taken from the MBCA, section 302A.011, subdivision 18. A 1990 amendment included a person elected, appointed, or designated by the members, as well as the board, in the definition of "officer." See the comments to section 317A.301.

Subdivision 16 (Organization). This is taken from the MBCA, section 302A.011, subdivision 19.

Subdivision 17 (Registered Office). This is taken from the MBCA, section 302A.011, subdivision 24.

Subdivision 18 (Related Organization). This is new. The term is used in a couple of sections, most notably in section 317A.255, dealing with director conflicts of interest.

Subdivision 19 (Signed). This is taken from the MBCA, section 302A.011, subdivision 30.

Subdivision 20 (Written Action). This is taken from former law in section 317.02, subdivision 12, and the MBCA, section 302A.011, subdivision 36.

## APPLICATION

### SECTION 317A.021: APPLICATION AND ELECTION

#### SOURCE:

This section combines provisions of the MBCA, section 302A.021, former law in section 317.04 and section 317.68, and the Hamline Article.

#### FORMER MINNESOTA PROVISIONS:

Minnesota Statutes, sections 317.04 and 317.68.

#### CHANGE FROM FORMER LAW:

Under former law, nonprofit corporations that were in existence on April 21, 1951, were not required to come under the organizational provisions of chapter 317, although they were brought under the entire chapter if they did not elect to reject those provisions. They were required to come under the provisions dealing with amendment of articles, books and records, merger and consolidation, dissolution and termination. As originally enacted, none of chapter 317A would have applied to the pre-chapter 317 corporations unless they elected to become governed by the entire chapter (with the exception of religious corporations as provided in section 317A.051). However, a 1990 amendment removed this distinction from former law and provides that pre-chapter 317 corporations will be subject to the sections in the new act that are parallel to the sections of chapter 317 that applied to them, if they do not elect to be governed by the entire chapter.

All existing chapter 317 corporations are required to come under the new law as of January 1, 1991, if they have not elected to come under it prior to that time.

#### GENERAL COMMENTS:

This section reflects a philosophy that as many nonprofit corporations as possible should be brought under the new Minnesota Nonprofit Corporation Act.

Requiring existing chapter 317 corporations to come under the new act raises a potential constitutional problem because of the failure of chapter 317 to include a reservation of right provision (see section 317A.041). In Trustees of Dartmouth College v. Woodward, 17 U.S. 518 (1819), the United States Supreme Court held that where the state has not reserved the power to alter, amend, or repeal a corporate charter, an amendment to that charter not accepted by the corporation is an unconstitutional impairment of contract. While the general principle stated in the Dartmouth College case may still have vitality, impairment of contract cases are



treated differently today than they were at the time of that decision. The analysis in impairment of contract cases applies a balancing test instead of finding that any impairment of a contract is absolutely unconstitutional. Even under cases that have followed Dartmouth College, courts have found that the state always reserves the right to exercise its police power, even if it isn't stated explicitly in the statute.

In Minnesota Trust Company of Austin v. Hatch, 368 N.W.2d 372 (Minn. App. 1985), the Minnesota Court of Appeals dealt with the constitutionality of a 1982 state law that required all banks and trust companies, savings and loan associations, credit unions, and industrial loan and thrift companies to obtain insurance from the Federal Deposit Insurance Corporation. The FDIC would not insure the plaintiff, Minnesota Trust Company, unless it ceased underwriting surety bonds, which accounted for 60 percent of its business activity. Minnesota Trust Company sued, alleging that the statute amounted to an unconstitutional impairment of its corporate charter under the contract clauses of the state and federal constitutions.

The Court of Appeals recognized that corporate charters are contracts within the meaning of the contract clause. However, it applied a three-part test established by the United States Supreme Court and adopted by the Minnesota Supreme Court to determine whether there is a contract clause violation. First, the state law must operate as a substantial impairment of the contractual relationship. Second, even if substantial impairment is shown, it may be valid if the state has a significant and legitimate public purpose behind the regulation. Finally, the legislative plan to promote the public purpose must be based upon reasonable conditions and of a character appropriate to the public purpose. If these tests are met, then there will not be an impairment of contract. In this case, the Court of Appeals upheld the constitutionality of the Minnesota Statute.

To the extent that the new Minnesota Nonprofit Corporation Act makes substantive changes in existing law, the changes should not be a substantial impairment of contract. For those that are more substantial, it was felt it would be a valid exercise of the state's police power and further a significant and legitimate public purpose, particularly given the state's regulatory interests over nonprofit corporations and the desirability of having uniformity in nonprofit corporation law.

Subdivision 1 provides that chapter 300 corporations (pre-chapter 317 nonprofit corporations), social and charitable organizations organized under the old provisions of chapter 309, and religious associations that have not become governed by chapter 317 may elect to be governed by the new Minnesota Nonprofit Corporation Act. A 1990 amendment clarified that this subdivision applies to corporations governed by, as well as incorporated under, the old statutes, since some may have originally been incorporated under or created by other law. The same change was made in subdivision 2.

Subdivision 2 provides that chapter 317 corporations may elect to become covered by the new act after August 1, 1989 and before January 1, 1991.

Subdivisions 3, 4, 5, 6, and 7 are very similar to the MBCA, section 302A.021, subdivisions 3 to 7.

Subdivision 3 provides for conforming the articles of electing corporations to this chapter.

Subdivision 4 contains the method of election. A 1990 amendment removed the requirement that an election take place at a special meeting and instead requires the meeting notice to include a statement that a purpose of the meeting is to consider an election to become governed by chapter 317A.

Subdivision 5 provides for the effect of an election upon bylaws.

Subdivision 6 provides that from August 1, 1989, to December 31, 1990, nonprofit corporations may be incorporated under this chapter or chapter 317.

Subdivision 7 provides that nonprofit corporations in existence on January 1, 1991, other than those incorporated under chapter 300, chapter 309, or chapter 315, will become governed by the new law if they have not previously made an election. A 1990 amendment provided that pre-chapter 317 corporations that elected to reject portions of the 1951 law will be governed by the sections in the new act that are parallel to the sections of chapter 317 that applied to them.

Subdivision 8 requires all new nonprofit corporations to be incorporated under this chapter on and after January 1, 1991.

Subdivision 9 contains special provisions dealing with the applicability of chapters 300, 316, 317, and 556 to nonprofit corporations under the new law. It incorporates language from former law in section 317.68, with some modifications.

#### **SECTION 317A.031: TRANSITION; CONTINUATION OF LEGAL ACTS**

##### **SOURCE:**

MBCA, section 302A.031, subdivision 1.

##### **FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**GENERAL COMMENT:**

See comments to the MBCA, section 302A.031.

**SECTION 317A.041: RESERVATION OF RIGHT**

**SOURCE:**

MBCA, section 302A.041.

**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**GENERAL COMMENT:**

See the discussion dealing with the reservation of right issue under the general comments to section 317A.021. While the state may require existing nonprofit corporations to come under the new law without a reservation of right, including this provision will remove any doubt concerning the application of future amendments to existing corporations.

**SECTION 317A.051: SCOPE OF CHAPTER**

**SOURCE:**

Former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.06.

## **CHANGE FROM FORMER LAW:**

Former law gave religious corporations the option of electing to come under some of the provisions of chapter 317, without coming under the organizational provisions in sections 317.01 to 317.25. They could elect to come under the provisions dealing with merger and consolidation, dissolution, and termination. This act allows them to elect to come under the provisions dealing with merger, consolidation, and transfer of assets. However, if they wish to avail themselves of the other provisions of the act, they will have to be incorporated under the entire chapter.

## **GENERAL COMMENT:**

With the changes noted above, most of this is derived from former law. New language is included to provide that if a religious corporation elects to become governed by the provisions of this chapter dealing with merger, consolidation, and transfer of assets, it will continue to file its documents with the county recorder rather than the Secretary of State.

### **SECTION 317A.061: FOREIGN NONPROFIT CORPORATIONS; SECTIONS APPLICABLE**

#### **SOURCE:**

Former law.

#### **FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.03.

#### **CHANGE FROM FORMER LAW:**

No substantive change.

## **INCORPORATION; ARTICLES**

### **SECTION 317A.101: PURPOSES**

#### **SOURCE:**

MBCA, section 302A.101; Model Act, section 3.01.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.05.

**CHANGE FROM FORMER LAW:**

The non-exclusive list of specific purposes for which nonprofit corporations may be formed that was in former law is eliminated.

**GENERAL COMMENT:**

This follows the general purpose statement in the MBCA, except that it incorporates language from the Model Act that refers to engaging in "lawful activity" instead of a "business purpose." The last sentence, providing that a corporation engaging in conduct regulated by another statute is subject to the other statute, is taken from the Model Act. Comments to the Model Act note that many nonprofit corporations are subject to regulation as a result of their activities, such as hospitals, educational institutions, and health maintenance organizations. This language is intended to make it clear that these corporations continue to be subject to the applicable regulatory provisions even though they have broad corporate powers.

**SECTION 317A.105: INCORPORATORS**

**SOURCE:**

MBCA, section 302A.105.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.07.

**CHANGE FROM FORMER LAW:**

Includes additional language providing that persons may act as incorporators by filing articles with the Secretary of State.

**GENERAL COMMENT:**

Comments to the MBCA indicate that the only important aspect of this provision is the fact that corporations may not act as incorporators.

## SECTION 317A.111: ARTICLES

### SOURCE:

MBCA, section 302A.111; and former law.

### FORMER MINNESOTA PROVISIONS:

Minnesota Statutes, section 317.08.

### CHANGE FROM FORMER LAW:

A number of required provisions under section 317.08, subdivision 2, are eliminated.

### GENERAL COMMENT:

Subdivision 1, dealing with the provisions that must be contained in the articles of incorporation, is based on the MBCA, section 302A.111, subdivision 1. Comments to the MBCA note that it reflects a change from prior law, by reducing the number of items that must be included in the articles of incorporation. The articles of incorporation will no longer need to include the purpose of the corporation, a statement that the corporation does not afford pecuniary gain to its members, the duration of the corporation, the number and names of the first board of directors, the personal liability of members, and whether the corporation has capital stock.

Subdivisions 2, 3, and 4 are not substantive, but provide an index of the provisions that may be modified in the articles, in the articles or bylaws, or optional provisions that may be included in the articles or bylaws, in accordance with the substantive provisions of this act. Comments to the MBCA, which this is modeled after, indicate that it is intended to list the applicable rules and options that may be altered or adopted in the articles or bylaws.

A 1990 amendment clarified a reference in subdivision 3, clause (3), dealing with the adoption, amendment, or repeal of bylaws by the members. Language in subdivision 4 that misstated the substantive law in sections 317A.237 and 317A.443 was stricken, clarifying that either the articles or bylaws may fix a greater than majority voting requirement for members or directors.

Subdivision 7 is new and makes it clear that to the extent that there is a conflict between the index of provisions contained in subdivisions 2, 3, and 4 and another section of this chapter, the substantive section controls.

**SECTION 317A.113: PRIVATE FOUNDATIONS; PROVISIONS  
CONSIDERED CONTAINED IN ARTICLES**

**SOURCE:**

Former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.165.

**CHANGE FROM FORMER LAW:**

No substantive change; Internal Revenue Code references are updated.

**SECTION 317A.115: CORPORATE NAME**

**SOURCE:**

MBCA, section 302A.115, as modified.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.09.

**CHANGE FROM FORMER LAW:**

No significant substantive change (but *see* Laws 1989, chapter 292, discussed in the comments to subdivision 2); new provisions are included.

**GENERAL COMMENT:**

This is very similar to the provisions in the MBCA in section 302A.115, and former law in section 317.09.

Subdivision 1 contains the requirements for a corporate name. It may not contain a word or phrase that shows or implies that it may not be incorporated under this chapter (the MBCA provides that it may not contain a word or phrase that implies that it is incorporated for a purpose other than a legal business purpose). New language is added clarifying that a corporate name need not contain the word "corporation," or similar terms, unlike a business corporation.

Subdivision 2 deals with the use of a deceptively similar name. Note that Laws 1989, chapter 292, section 13, amended this subdivision by changing the

standard from "deceptively similar" to "distinguishable." A 1990 amendment corrected the headnote consistent with this change.

Subdivision 3 provides that this section, as well as sections 317A.117 (reserved name) and 317A.823, subdivision 2, (dealing with regaining the corporate name when a corporation has lost its good standing for failure to file the annual registration), do not limit potential liability under other laws, even though the name complies with this section. Comments to the MBCA note that other laws may restrict or prohibit the use of a name and should be checked before transacting business under that name.

Subdivision 4 deals with the use of a name by a successor corporation, and is based on the MBCA. There was no similar provision in former law.

Subdivision 5 deals with the effect of wrongful use of a name.

Subdivision 6 was added by Laws 1989, chapter 292, section 12. It includes a cross-reference to the new administrative procedure for contesting the registration of a name in the Secretary of State's office.

#### **SECTION 317A.117: RESERVED NAME**

##### **SOURCE:**

MBCA, section 302A.117.

##### **FORMER MINNESOTA PROVISION:**

None.

##### **CHANGE FROM FORMER LAW:**

New provision.

##### **GENERAL COMMENT:**

See the comments to the MBCA, section 302A.117. Stylistic changes are made in the language from the MBCA, by stating that a name may be reserved, without referring to the exclusive right to the use of the corporate name. This is intended to emphasize that the use of the name may be prohibited under other law (see the comments to section 317A.115 and the MBCA, section 302A.115).

Former law did not contain a provision for reservation of a name, although it may have been possible for persons intending to form a nonprofit corporation to



reserve a name under the MBCA, since that allows a person intending to incorporate under a name to reserve the name but does not necessarily require that the person incorporate under chapter 302A.

This section also was amended by Laws 1989, chapter 292, section 13, eliminating the reference to a person doing business under a deceptively similar name under subdivision 1, clause (1).

**SECTION 317A.121: REGISTERED OFFICE; REGISTERED AGENT**

**SOURCE:**

MBCA, section 302A.121.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.19 (registered office).

**CHANGE FROM FORMER LAW:**

With respect to the registered office, a statement is included that it need not be the same as the principal place of business of the corporation. The provisions dealing with a registered agent are new, and are taken from the MBCA.

**GENERAL COMMENT:**

Subdivision 1 requires a corporation to continuously maintain a registered office in this state, which need not be the same as the principal place of business.

Subdivision 2 authorizes a corporation to designate a registered agent in its articles. The office of the registered agent and the registered office of the corporation must be identical.

**SECTION 317A.123: CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT; CHANGE OF NAME**

**SOURCE:**

MBCA, section 302A.123, as modified.

#### FORMER MINNESOTA PROVISION:

Minnesota Statutes, section 317.19, subdivisions 2 and 4 (change of registered office).

#### CHANGE FROM FORMER LAW:

A statement filed with the secretary of state will have to provide that the address of the registered office and the registered agent will be identical, and that the change of registered office or registered agent was authorized by a resolution approved by the board. The provisions dealing with a registered agent are all new.

Former law in section 317.19, subdivision 4, provided for a penalty of \$15 per day, up to a maximum of \$300, for failure to comply with the registered office requirements, which was enforced by the attorney general. This specific penalty is eliminated, although under appropriate circumstances the attorney general could bring an action for equitable relief under section 317A.751.

#### GENERAL COMMENT:

Subdivision 1 provides that a corporation may change its registered office, designate or change its registered agent, or state a change in the name of registered agent by filing a statement with the secretary of state. Changes are made in the contents of the statement, consistent with changes in the MBCA enacted in 1989 (*see* Laws 1989, chapter 236). It does not have to include the present address of the registered office or present name of the registered agent. Only information relating to the change of office or change of registered agent is required.

Subdivision 2 provides that a registered agent may resign by filing a notice of resignation with the secretary of state and giving a signed copy to the corporation. This is identical to the MBCA, section 302A.123, subdivision 2.

Subdivision 3 deals with the change of address or name of the registered agent, and is also taken from the MBCA.

#### SECTION 317A.131: AMENDMENT OF ARTICLES

#### SOURCE:

MBCA, section 302A.131, as modified, and former law in section 317.27, subdivision 1.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.27.

**CHANGE FROM FORMER LAW:**

No significant change.

**SECTION 317A.133: PROCEDURE FOR AMENDMENT OF ARTICLES**

**SOURCE:**

MBCA, sections 302A.133 and 302A.135; former law in section 317.27; and the Hamline Article, section 3.6, subdivision 1.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.27.

**CHANGE FROM FORMER LAW:**

A majority of incorporators may amend the articles by written action if there are no directors or members with voting rights. When there are no members with voting rights, a majority of directors may amend the articles, rather than two-thirds of the directors present at a meeting required in section 317.24, subdivision 4.

The requirement under section 317.27, subdivision 2, that officers and directors be given a notice of the member meeting to vote on the proposed amendment is eliminated.

If the members with voting rights authorize the board of directors to exercise the power of amending the articles without member approval, a majority of the board may do so, instead of the two-thirds vote required under section 317.27, subdivision 3, unless the articles or bylaws or the members' resolution requires a greater vote.

Subdivision 5, dealing with class approval, is a new provision under which the articles or bylaws may provide that an amendment must be approved by the members of the class.

**GENERAL COMMENT:**

Subdivision 1 provides for amendment of the articles by the incorporators or by the board if there are no members with voting rights, if the voting members have

authorized the board to amend the articles, or if the amendment merely restates the existing articles, as amended. A 1990 amendment clarified that a notice of the meeting and of the proposed amendment must be given to the board.

Subdivision 2 provides for approval by the board and by members with voting rights, based on former law. In addition, language is included providing that if an amendment is proposed and approved by the members, they may demand a special board meeting within 60 days for consideration of the amendment if a regular board meeting would not occur during that time. This is based on the Hamline Article, section 3.6, subdivision 1, paragraph (b). Comments to the Hamline Article indicate that it is largely based on the California nonprofit corporation law.

A 1990 amendment corrected provisions dealing with the proportion of members needed to approve amendments to the articles. Amendments would need to be approved by the members with voting rights (usually a majority of the members voting on the issue), rather than a majority of all members with voting rights. This is consistent with the former law and practice, since it would be difficult for many nonprofit corporations to get a majority of the members to vote. Similar changes were made in subdivisions 3 and 4.

Subdivision 3 is based on former law, with the changes noted above, and allows the members with voting rights to authorize the board of directors to exercise the power of amendment of the articles without member approval.

Subdivision 4 provides that the articles or bylaws may require greater than majority approval by the board or voting members, and may limit or prohibit the use of mail ballots by voting members. This also is taken from the Hamline Article, section 3.6.

Subdivision 5 provides for class approval of amendments.

#### **SECTION 317A.139: ARTICLES OF AMENDMENT**

##### **SOURCE:**

MBCA, section 302A.139.

##### **FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.27, subdivision 5.

**CHANGE FROM FORMER LAW:**

The requirement in former law that the articles of amendment state the manner of adoption is eliminated.

**SECTION 317A.141: EFFECT OF AMENDMENT**

**SOURCE:**

MBCA, section 302A.141.

**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**GENERAL COMMENT:**

See the comments to the MBCA, section 302A.141.

**SECTION 317A.151: FILING; EFFECTIVE DATE OF ARTICLES**

**SOURCE:**

MBCA, sections 302A.151 and 302A.153; and former law in section 317.10.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, sections 317.10 (filing articles of incorporation) and 317.27 (amendment of articles).

**CHANGE FROM FORMER LAW:**

No significant substantive change.

**SECTION 317A.155: PRESUMPTION; CERTIFICATE OF INCORPORATION**

**SOURCE:**

MBCA, section 302A.155.

**FORMER MINNESOTA PROVISIONS:**

Minnesota Statutes, sections 317.10 and 317.12.

**CHANGE FROM FORMER LAW:**

Former law provided that a certificate of incorporation was conclusive evidence of the fact of incorporation but did not limit rules of law relative to corporations de facto or by estoppel (section 317.12, subdivision 2). This section provides that it is presumed that conditions precedent have been complied with and that the corporation has been incorporated, but the presumption does not apply against a proceeding to cancel or revoke the certificate of incorporation or to compel involuntary dissolution.

**POWERS**

**SECTION 317A.161: POWERS**

**SOURCE:**

MBCA, section 302A.161, as modified; former law in sections 317.16 and 317.17; and the Model Act, section 3.02 (13).

**FORMER MINNESOTA PROVISIONS:**

Minnesota Statutes, sections 317.16 and 317.17.

**CHANGE FROM FORMER LAW:**

No significant substantive changes. A number of powers not specifically provided for in former law are included, based on the MBCA and the Model Act.

**GENERAL COMMENT:**

Subdivision 1 is new and it provides that a corporation's powers are subject to limitations provided in applicable federal or state law. This is intended to alert

corporations to the fact that there may be other restrictions on their activities, most notably in the area of tax law.

Most of the provisions combine powers in the MBCA and former law. Subdivision 11, dealing with corporate donations, is taken from the Model Act, section 3.02 (13).

Subdivision 13 provides that nonprofit corporations may participate in the operation and ownership of different entities. In particular, paragraph (b) makes it clear that a corporation may be a partner.

Subdivisions 23 and 24 allow a corporation to take, hold, and invest trust property. Note that the Minnesota Supreme Court dealt with the issue of a foundation acting as a trustee in the case of In re Trusts Created by Hormel, 282 Minn. 197, 163 N.W.2d 844 (1968). It found that a charitable foundation created to administer the Hormel family trust had the power to act as trustee if authorized by its articles.

#### **SECTION 317A.163: CORPORATE SEAL**

##### **SOURCE:**

MBCA, section 302A.163.

##### **FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.16, subdivision 2, clause (3).

##### **CHANGE FROM FORMER LAW:**

Former law authorized a corporation to have a corporate seal, but did not include the specific provisions of this section.

#### **SECTION 317A.165: EFFECT OF LACK OF POWERS; ULTRA VIRES**

##### **SOURCE:**

MBCA, section 302A.165, as modified.

##### **FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**GENERAL COMMENT:**

Subdivision 2 provides that at least 50 members with voting rights or ten percent of the members with voting rights, whichever is less, may bring an action to prevent the corporation from performing ultra vires acts.

Note that this is the threshold number of members required throughout the act in order to initiate certain member actions. This threshold is intended to be high enough to prevent frivolous actions that drain potentially limited resources of nonprofit corporations, while still allowing a minority of members to act. Under appropriate circumstances, the attorney general may be able to intervene, even though there are not enough members willing to act.

Subdivision 3 provides that the corporation may bring an action against the officers or directors who exceeded or violated their authority.

In addition, note that the attorney general could bring an action under section 317A.751, subdivision 5, clause (5), if the corporation engaged in an unauthorized act or exceeded its powers.

**ORGANIZATION; BYLAWS**

**SECTION 317A.171: ORGANIZATION**

**SOURCE:**

MBCA, section 302A.171, as modified.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.14.

**CHANGE FROM FORMER LAW:**

No significant substantive change.

**GENERAL COMMENT:**

This is similar to the MBCA, except that a number of specific activities that may be conducted at the first meeting under section 302A.171, subdivision 2, are not



included since they may not be appropriate in the case of a nonprofit corporation. In general, it clarifies the role of the incorporators in organizing the corporation.

The provision in former law under section 317.14, providing for the first meeting of the members, is not included, although presumably a meeting could be called under the general provisions dealing with meetings of members.

## SECTION 317A.181: BYLAWS

### SOURCE:

MBCA, section 302A.181; former law in section 317.15; and the Hamline Article, section 5.

### FORMER MINNESOTA PROVISION:

Minnesota Statutes, section 317.15.

### CHANGE FROM FORMER LAW:

Section 317.15, subdivision 2, clause (1), provided that any five members could propose an amendment to the bylaws. This section requires at least 50 members with voting rights or ten percent of the members with voting rights, whichever is less, in order to propose member action on bylaws, unless the articles or bylaws provide otherwise (see the discussion under section 317A.165).

Under former law, the procedure for amendment of the bylaws by the directors was the same as the procedure for the amendment of articles. As a result, if there were no members with voting rights, a two-thirds vote of the directors at a meeting was required. This section only requires a majority vote.

### GENERAL COMMENT:

Subdivision 1 contains the general requirements for bylaws. A corporation may, but need not, have bylaws. A number of provisions that may be included in bylaws are taken from former law, as well as the Hamline Article.

Note that in Brennan v. Minneapolis Society for the Blind, Inc., 282 N.W.2d 515 (1979), the Minnesota Supreme Court held that all bylaws of a corporation must be fair and reasonable. A court may review the reasonableness of bylaws if an injury is alleged. In that case, the Supreme Court upheld the trial court's finding that the bylaws adopted by the Minneapolis Society for the Blind were unreasonable, and that it was obvious that they were taken to bar critical minority members from gaining additional representation in the organization.

Subdivision 2 provides for adoption of an amendment to bylaws, and is based on the MBCA, section 302A.181, subdivisions 2 and 3. Language is included clarifying that when the members take action on bylaws, the procedures are the same for amendments to the articles, except that board approval is not required. In addition, new language is included providing that the articles or bylaws may impose additional requirements for the members to adopt, amend, or repeal the bylaws.

A 1990 amendment clarified that the restriction on the board's ability to adopt, amend, or repeal certain types of bylaws once the initial bylaws are established applies only if there are members with voting rights. Language was moved from section 317A.443, subdivision 1, dealing with bylaw amendments to increase or decrease the vote required for member action. Other changes make it clear that the articles or bylaws may establish different procedures relating to member actions on bylaws.

## BOARD

### SECTION 317A.201: BOARD

#### SOURCE:

MBCA, section 302A.201, subdivision 1; former law in section 317.20, subdivision 1.

#### FORMER MINNESOTA PROVISION:

Minnesota Statutes, section 317.20, subdivision 1.

#### CHANGE FROM FORMER LAW:

No significant substantive change.

#### GENERAL COMMENT:

This is very similar to the language in the MBCA, with a couple of changes. Language is included providing that the members of the first board may be designated or appointed pursuant to the articles. For some nonprofit corporations, a particular person or entity may have authority to designate or appoint individuals as directors. The MBCA refers to election of the directors by the shareholders. Since many nonprofit corporations will not have members with voting rights, the board of directors will be selected in some other manner.

A 1990 amendment specifically provided that all directors are entitled to vote and have equal rights and preferences except as otherwise provided in the articles or bylaws. Similar language applies to the members in section 317A.401, subdivision 4.

**SECTION 317A.203: NUMBER**

**SOURCE:**

Former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.20, subdivision 1.

**CHANGE FROM FORMER LAW:**

None.

**GENERAL COMMENT:**

This retains the provision in former law providing that the board of directors must consist of three or more individuals, except that if there are either one or two members with voting rights, the number of directors may be less than three but not less than the number of members with voting rights. Compare this to the MBCA, which allows a board of directors to consist of one or more directors.

Note that former law referred to the number of members, but did not specifically refer to members with voting rights.

**SECTION 317A.205: QUALIFICATIONS; ELECTION**

**SOURCE:**

MBCA, section 302A.205, as modified; former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.20, subdivision 2.

**CHANGE FROM FORMER LAW:**

Former law did not require that a majority of the directors be adults.

## GENERAL COMMENT:

Note that under section 317A.105, the incorporators must be adults. However, there has never been a requirement that the members of the board of directors be adults. Although it may not be appropriate to require all of the board members to be adults, it seems desirable to require at least a majority of the directors of a nonprofit corporation to be adults.

A 1990 amendment removed references to designated directors and instead the statute refers to ex officio directors who are directors because they hold another office or position. This was intended to eliminate possible confusion regarding the difference between designated and appointed directors.

## SECTION 317A.207: TERMS

### SOURCE:

MBCA, section 302A.207; Hamline Article, section 6.3; Model Act, sections 8.05 and 8.06; and former law.

### FORMER MINNESOTA PROVISION:

Minnesota Statutes, section 317.20, subdivision 3.

### CHANGE FROM FORMER LAW:

No significant substantive change, although a number of new provisions are included. Former law did not specifically require fixed terms, although section 317.20, subdivision 3, provided that a director held office for the term for which the director was elected.

## GENERAL COMMENT:

Subdivision 1 provides for the length of the term of directors. It is similar to the Hamline Article, section 6.3, which is based on the California Corporate Code. The important point is that the term must be for a fixed period of time and may not be indefinite. A term of a director, other than an ex officio director, may not exceed ten years (the Hamline Article uses three years). If a fixed term is not provided in the articles or bylaws, the term is one year. This is in contrast to section 302A.207 of the MBCA, which provides that directors serve for fixed terms that expire at the next regular meeting of the shareholders and a fixed term may not exceed five years.

It is important to put some kind of limitation on the term of directors, without being too restrictive. A 1990 amendment provided that an ex officio director serves as long as the director holds the office or position designated in the articles or bylaws and therefore would not be subject to the ten year limit on the length of a term.

Note that there is no limitation on the number of terms a director may serve, only on the length of the term.

Subdivision 1, paragraph (b), is based on the MBCA, section 302A.207, and former law.

Subdivision 2, authorizing staggered terms, is taken from the Model Act, section 8.06. Comments to the Model Act note that allowing staggered terms will help provide continuity in the board.

#### **SECTION 317A.209: ACTS NOT VOID OR VOIDABLE**

##### **SOURCE:**

MBCA, section 302A.209.

##### **FORMER MINNESOTA PROVISION:**

None.

##### **CHANGE FROM FORMER LAW:**

New provision.

##### **GENERAL COMMENTS:**

See the comments to the MBCA, section 302A.209.

#### **SECTION 317A.211: COMPENSATION**

##### **SOURCE:**

MBCA, section 302A.211.

##### **FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.20, subdivision 5.

## CHANGE FROM FORMER LAW:

Former law provided that directors' compensation could be authorized by the members, instead of the board.

## SECTION 317A.213: CLASSIFICATION OF DIRECTORS

### SOURCE:

New provision.

### FORMER MINNESOTA PROVISION:

None.

## CHANGE FROM FORMER LAW:

New provision.

### GENERAL COMMENT:

This section was the subject of considerable debate. It provides that directors may be divided into classes, but directors of a corporation that hold assets for a public or charitable purpose, or a corporation that is exempt under section 501(c)(3) of the Internal Revenue Code, may not vote by class, except when the articles or bylaws provide that only one class of directors may vote on a particular matter. Note that a 1990 amendment clarified this prohibition on class voting. It is intended to restrict the use of bicameral boards where the independent approval of more than one class may be required for board action.

The problem this section attempts to address may be best understood by reading the cases surrounding the administration of the Bush Foundation and problems that arose after a bicameral board of directors was established. *See In re Estate of Bush v. Arrowood*, 302 Minn. 188, 224 N.W.2d 489 (1974); and 304 Minn. 105, 230 N.W.2d 33 (1975). The establishment of the two classes was an attempt to settle a disagreement between Mrs. Bush, the surviving wife of A. G. Bush, who set up the Bush Foundation with the bulk of his estate, and the executors of her husband's estate and some of the directors. In order for the foundation to perform any charitable activities, a majority vote of each group was required. The effect of this was to give Mrs. Bush a veto power over the operations of the foundation, since she and two persons acceptable to her formed one of the two classes. Disputes between the two groups led to protracted litigation. Questions also were raised concerning the legality of a bicameral board under the Minnesota Nonprofit Corporation Act, because section 317.20, subdivision 1, did not provide for a

bicameral board but merely stated that a board of at least three directors must manage the business of the corporation. However, the trial court did not rule on the issue because the parties stipulated to a new board of directors that was not composed of classes.

Given the questions raised in the Bush case, it is important to address the use of classes of directors. This section reflects a philosophy that because of the potential drain on charitable resources that may result from litigation when the classes of directors are deadlocked, there is a strong public policy in favor of prohibiting the use of multiple voting classes of directors, at least in the types of charitable corporations covered by this section. While a bicameral board may not be used, it will still be possible for corporations to require a greater than majority vote for certain types of actions if there is a concern for protecting minority interests.

#### **SECTION 317A.215: CUMULATIVE VOTING FOR DIRECTORS**

##### **SOURCE:**

New provision.

##### **FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.22, subdivision 7.

##### **CHANGE FROM FORMER LAW:**

The presumption in favor of cumulative voting is eliminated.

##### **GENERAL COMMENT:**

Former law provided that cumulative voting was permissible unless the articles or bylaws precluded it. This switches the presumption so that it will be authorized only if provided for in the articles, since cumulative voting is rarely if ever used by nonprofit corporations.

#### **SECTION 317A.221: RESIGNATION**

##### **SOURCE:**

MBCA, section 302A.221; Model Act, section 8.07.

**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**GENERAL COMMENT:**

Paragraph (a) is based on the MBCA and provides that a director may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when given unless a later effective time is specified.

Paragraph (b) is taken from the Model Act and authorizes the board to fill a pending vacancy provided that the successor does not take office until the effective date of the resignation.

**SECTION 317A.223: REMOVAL OF DIRECTORS**

**SOURCE:**

MBCA, section 302A.223, as modified.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.20, subdivision 10.

**CHANGE FROM FORMER LAW:**

Former law did not specifically provide for removal of directors by other members of the board when there were no members with voting rights.

**GENERAL COMMENT:**

This is very similar to the MBCA, except that subdivision 3 is included to provide for removal by the directors when there are no members with voting rights.

**SECTION 317A.225: REMOVAL OF APPOINTED DIRECTORS**

**SOURCE:**

Model Act, section 8.09.



**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**GENERAL COMMENT:**

This section contains special provisions for the removal of appointed directors. A 1990 amendment removed references to designated directors under this section (see the general comment under section 317A.205).

A person who has authority to appoint a director may remove that director except as otherwise provided in the articles or bylaws.

**SECTION 317A.227: VACANCIES**

**SOURCE:**

Model Act, section 8.11.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.20, subdivision 9.

**CHANGE FROM FORMER LAW:**

No significant substantive change; new provisions are included.

**GENERAL COMMENT:**

Former law provided that the remaining members of a board could fill a vacancy. This also provides that any members with voting rights may fill a vacancy, in addition to the remaining members of the board. Special provisions are included for vacancies involving directors elected by a particular class or other unit, appointed directors, and designated directors. The reference to designated directors probably should be deleted in this section, since a 1990 amendment removed general provisions in the act dealing with designated directors. Note that if the remaining members of the board are less than a quorum, they may still fill a vacancy of an elected director.

## SECTION 317A.231: BOARD MEETINGS

### SOURCE:

MBCA, section 302A.231; Hamline Article, section 6.4; former law.

### FORMER MINNESOTA PROVISION:

Minnesota statutes, section 317A.20, subdivision 8.

### CHANGE FROM FORMER LAW:

Former law did not provide that meetings of the board must be held at least once per year; miscellaneous new provisions are included.

### GENERAL COMMENT:

Subdivision 1 contains the general provisions for the time and place of board meetings and is based on the MBCA, section 302A.231, subdivision 1. The requirement that a meeting of the board must be held at least once per year unless the articles or bylaws provide otherwise is taken from the Hamline article, section 6.4. Comments to the article note that in order to protect the public's interest, directors of a nonprofit corporation should be required to meet at least once a year.

Subdivision 2, which authorizes the use of alternative means of communication through which the directors may simultaneously hear one another during a board meeting, is based on similar provisions in former law, section 317.20, subdivision 8, clause (4), and the MBCA, section 302A.231, subdivision 2.

Subdivision 3, dealing with calling meetings and notice, is taken from the MBCA, section 302A.231, subdivision 3, except that five days instead of ten days notice is required. Former law did not contain a specific notice, and it was felt that five days is sufficient.

Subdivision 4, dealing with waiver of notice, is taken from the MBCA, section 302A.231, subdivision 5. Former law, section 317.24, dealt with waiver of notice by a director or member.

## SECTION 317A.235: QUORUM

### SOURCE:

MBCA, section 302A.235; former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.20, subdivision 8; and 317.23, subdivision 2.

**CHANGE FROM FORMER LAW:**

Former law did not contain language authorizing the board to continue transacting business after a quorum was lost.

**GENERAL COMMENT:**

This is based on the MBCA, section 302A.235. It allows the directors to continue to transact business once a quorum is present at a meeting, even if the quorum was lost.

**SECTION 317A.237: ACT OF THE BOARD**

**SOURCE:**

MBCA, section 302A.237

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.20, subdivision 8.

**CHANGE FROM FORMER LAW:**

No substantive change.

**GENERAL COMMENT:**

Note that directors may not vote by proxy. This is derived from their basic fiduciary duty to the corporation.

A 1990 amendment included references to directors with voting rights who are entitled to vote, recognizing that a corporation may have directors without voting rights or that not all directors may be entitled to vote on a particular matter.

**SECTION 317A.239: ACTION WITHOUT A MEETING**

**SOURCE:**

MBCA, section 302A.239; former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.20, subdivision 12.

**CHANGE FROM FORMER LAW:**

No change.

**GENERAL COMMENT:**

The articles may authorize written action by less than all the directors, if the action does not require member approval. Compare this to section 317A.445, dealing with a written action by members, which always must be signed by all the members entitled to vote.

**SECTION 317A.241: COMMITTEES**

**SOURCE:**

MBCA, section 302A.241.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.20, subdivision 11 (executive committees).

**CHANGE FROM FORMER LAW:**

Former law did not specifically provide for the creation of committees, other than executive committees constituting members of the board.

**GENERAL COMMENT:**

See the comments to the MBCA, section 302A.241. Note that the appointment of a committee does not alone constitute compliance by a director with the director's standard of conduct. Committee members will be considered directors for purposes of the standard of conduct, conflicts of interest, and indemnification.

**SECTION 317A.251: STANDARD OF CONDUCT**

**SOURCE:**

MBCA, section 302A.251; Model Act, section 8.30 (4).

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.20, subdivision 6.

**CHANGE FROM FORMER LAW:**

No significant difference in the standard of care, but the provisions are expanded consistent with the MBCA. The former standard of conduct in the nonprofit corporation act was based on the standard of conduct in the old business corporation act.

**GENERAL COMMENT:**

Subdivisions 1 to 3 are nearly identical to the standard of conduct in the MBCA. A 1990 amendment provided that a director is not presumed to have assented to an action if the director is prohibited by the articles or bylaws from voting. This was particularly intended to address conflict of interest provisions in the articles or bylaws, although it may apply in other situations.

Subdivision 4 is an important new provision based on the Model Act. It provides that a director is not considered a trustee with respect to the corporation or its property. There is frequently a question as to whether directors of nonprofit corporations will be held to the higher trustee standard of care. This provision makes it clear that nonprofit corporation directors will be held to the general business standard of care. However, the corporation itself may still be liable on the basis of a trustee's standard of care, but the directors may not be held individually liable under this standard.

**SECTION 317A.255: DIRECTOR CONFLICTS OF INTEREST**

**SOURCE:**

MBCA, section 302A.255, subdivisions 1 and 2, as modified.

**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**GENERAL COMMENT:**

Former law was silent on the issue of conflicts of interest for directors of nonprofit corporations, although particular corporations may have policies in their articles or bylaws. This section adopts the provisions of the MBCA, section 302A.255, subdivisions 1 and 2, with a few changes. Under subdivision 1, transactions between a corporation's director and a related organization are included. This was seen as a potential gap in the MBCA. Subdivision 3 is a new provision, which provides that the procedures for approval or ratification of a transaction in which a director is interested are not required if the contract or transaction is between related organizations. "Related organization" is defined in section 317A.011, subdivision 18. In this situation, concerns over conflicts of interest should not be present and directors will not have to worry about the conflict of interest provisions when sitting on boards of related entities.

**SECTION 317A.257: UNPAID DIRECTORS; LIABILITY FOR DAMAGES**

**SOURCE:**

Former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.201.

**CHANGE FROM FORMER LAW:**

None.

**GENERAL COMMENT:**

This makes no substantive change in the law dealing with immunity from liability for unpaid directors of nonprofit organizations.

**OFFICERS**

**SECTION 317A.301: OFFICERS REQUIRED**

**SOURCE:**

MBCA, 302A.301, as modified.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.21, subdivisions 1 and 2.

**CHANGE FROM FORMER LAW:**

Former law included the offices of president, secretary, and treasurer. The office of secretary is no longer required. There is no specific age requirement for officers, compared to former law which provided that officers had to be natural person of full age. See section 317.21, subdivision 2.

**GENERAL COMMENT:**

This adopts the officer language of the MBCA in section 302A.301, except that it uses the terms "president" and "treasurer" instead of "chief executive officer" and "chief financial officer." Although a corporation will not be required to have a secretary, it could designate other officers under section 317A.311.

A 1990 amendment provided that the board shall elect or appoint officers, except to the extent that the articles or bylaws provide that the members may elect or appoint officers. Changes were made in sections 317A.311, 317A.321, and 317A.341, consistent with allowing corporations to give members the power to elect officers.

**SECTION 317A.305: DUTIES OF REQUIRED OFFICERS**

**SOURCE:**

MBCA, section 302A.305.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.21, subdivision 4.

**CHANGE FROM FORMER LAW:**

No significant substantive change; a number of new provisions are included.

**GENERAL COMMENT:**

This is based on the MBCA, section 302A.305. Former law did not list specific duties of the officers, but generally provided that they had the duties prescribed in the articles or bylaws or by the board of directors.

**SECTION 317A.311: OTHER OFFICERS**

**SOURCE:**

MBCA, section 302A.311.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.21, subdivision 1.

**CHANGE FROM FORMER LAW:**

No substantive change.

**SECTION 317A.315: MULTIPLE OFFICES**

**SOURCE:**

MBCA, section 302A.315.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.31, subdivision 1, clause (3).

**CHANGE FROM FORMER LAW:**

No significant substantive change.

**GENERAL COMMENT:**

Former law did not contain the language providing that a person may sign a document in more than one capacity.

**SECTION 317A.321: OFFICERS CONSIDERED ELECTED**

**SOURCE:**

MBCA, section 302A.321.

**FORMER MINNESOTA PROVISION:**

None.



**CHANGE FROM FORMER LAW:**

New provision.

**SECTION 317A.331: CONTRACT RIGHTS**

**SOURCE:**

MBCA, section 302A.331

**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**SECTION 317A.341: RESIGNATION; REMOVAL; VACANCIES**

**SOURCE:**

MBCA, section 302A.341.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.31, subdivision 3 (removal).

**CHANGE FROM FORMER LAW:**

Former law did not specifically provide for the resignation of officers or the filling of vacancies.

**SECTION 317A.351: DELEGATION**

**SOURCE:**

MBCA, section 302A.351.

**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**SECTION 317A.361: STANDARD OF CONDUCT**

**SOURCE:**

MBCA, section 302A.361; *see also* Model Act, section 8.30 (4).

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.21, subdivision 4, clause (2).

**CHANGE FROM FORMER LAW:**

No significant substantive change in the general standard of care, but additional provisions are included.

**GENERAL COMMENT:**

Like the section dealing with the directors' standard of conduct, the officers' standard of conduct also provides that officers are not held to a trustee standard of care. Although this is less likely to be a problem for officers, it is helpful to include the provision in this section as well.

**MEMBERS**

**SECTION 317A.401: MEMBERS**

**SOURCE:**

Hamline Article, section 8.1, California Corporations Code; MBCA, section 302A.401; Model Act, sections 6.01 and 6.02.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.25.

## CHANGE FROM FORMER LAW:

A number of new provisions are included clarifying and expanding the law dealing with members. In the absence of a provision in its articles or bylaws providing for members, a corporation will have no members.

## GENERAL COMMENT:

Subdivision 1, paragraph (a), provides that a corporation may have one or more classes of members or may have no members, and in the absence of a provision in the articles or bylaws providing for members, a corporation has no members. This is derived from the Hamline Article, section 8.1. The statement that in the absence of a provision in its articles or bylaws providing for members, a corporation has no members, is taken from the California Corporate Code, Sec. 5310, paragraph (a).

Subdivision 1, paragraphs (b) and (c), are taken from the California Corporate Code, Sec. 5310, paragraphs (b) and (c).

Subdivisions 2 and 3, dealing with admission and consideration for membership, are taken from the Model Act, sections 6.01 and 6.02. Note that under subdivision 2, a person may not be admitted as a member without the person's express or implied consent. Language in the Model Act is expanded to provide that consent includes, but is not limited to, acceptance of membership benefits knowing that the benefits are available only to members, or taking some other affirmative action that confers membership benefits. Language also is added to provide that if the articles or bylaws provide that a person who contributes to the corporation is a member, a contribution is consent for purposes of this subdivision.

Comments to the Model Act, section 6.01, note that sometimes corporations name people as members without being able to identify individuals. For example, membership may be defined in terms of some broad-based constituency, such as "all poor people within one mile of city hall." Requiring consent is intended to make sure that individuals take some kind of action to become affiliated with or associated with a nonprofit corporation, such as attending a meeting, voting, or otherwise showing consent. It is not intended that the consent requirement be interpreted too strictly, but at the very least a person should take some kind of action to be affiliated with a nonprofit corporation before becoming a member.

Subdivision 4, dealing with the rights of members, is a modified version of the MBCA, section 302A.401, subdivision 2. The articles or bylaws may fix or limit the rights and preferences of members or classes of members. This will allow corporations to give members some but not all voting rights. A 1990 amendment made it clear that classes may be established in the articles, or in the bylaws if authorized by the articles.

## **SECTION 317A.403: MEMBERSHIP CERTIFICATES**

### **SOURCE:**

Former law.

### **FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.25, subdivision 2.

### **CHANGE FROM FORMER LAW:**

The provisions dealing with share certificates contained in section 317:25, subdivision 2, clauses (a) to (f), are eliminated.

### **GENERAL COMMENT:**

This section contains authorization for the issuance of membership certificates without specific requirements regarding their contents. The 1989 Act eliminated the former provisions dealing with share certificates because they were considered unnecessary. A limited exception was included for the issuance of stock to a member who was a government unit or agency (also see the definition of "corporation" in section 317A.011, subdivision 6). For example, under the Minority Enterprise Small Business Investment Corporation ("MESBIC") program of the federal Small Business Administration ("SBA"), the MESBIC must be able to issue preferred stock to the SBA.

A number of corporations who issue stock to members who are nonprofit corporations were concerned about the restriction on the use of stock under the 1989 law. In response to these concerns, a 1990 amendment removed the specific provisions dealing with issuance of stock to a government unit or agency and the law generally provides that a corporation may issue stock instead of a membership certificate.

## **SECTION 317A.405: TRANSFER OF MEMBERSHIP**

### **SOURCE:**

Model Act, section 6.11.

### **FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.25, subdivision 6.

**CHANGE FROM FORMER LAW:**

No significant substantive change.

**GENERAL COMMENT:**

This provision is based on the Model Act, except that the Model Act also provides that no member of a public benefit or religious corporation may transfer a membership (therefore, transferred memberships may not be authorized in the articles or bylaws). Former law provided that a membership could not be transferred, except as otherwise provided in the articles or bylaws. Additional language is included to provide that if transfer rights have been included, a restriction on them is not binding with respect to members holding a membership issued before adoption of the restriction unless the restriction is approved by the members and the affected member.

**SECTION 317A.407: LIABILITY OF MEMBERS**

**SOURCE:**

Model Act, section 6.12; former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.25, subdivision 3.

**CHANGE FROM FORMER LAW:**

Former law did not specifically address the liability of members as in subdivision 1, although the articles of incorporation were required to state the personal liability, if any, of members under section 317.08, subdivision 2. In addition, section 317.25, subdivision 2, provided that share certificates must include the personal liability, if any, of the holder.

**GENERAL COMMENT:**

Subdivision 1 is taken from the Model Act, section 6.12.

Subdivision 2 is based on former law in section 317.25, subdivision 3, dealing with dues and assessments.

## **SECTION 317A.409: RESIGNATION**

### **SOURCE:**

Model Act, section 6.20.

### **FORMER MINNESOTA PROVISION:**

None.

### **CHANGE FROM FORMER LAW:**

New provision.

### **GENERAL COMMENT:**

Comments to the Model Act note that this sets forth the basic right of a member to resign from a nonprofit corporation at any time. This would not relieve the person from any liability to the corporation based on a contract or other obligations. Language is included referring to the obligation for dues, assessments, or fees or charges for goods or services, to make it clear that a member may not resign and eliminate liability for these amounts. This is particularly a problem for certain service organizations.

## **SECTION 317A.411: TERMINATION**

### **SOURCE:**

Model Act, section 6.21.

### **FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.25, subdivision 4.

### **CHANGE FROM FORMER LAW:**

Most of these provisions are new, particularly to the extent that a fair and reasonable procedure is required for termination of membership.

### **GENERAL COMMENT:**

Comments to the Model Act note that this codifies judicially developed requirements that terminations take place by a fair and reasonable procedure. A procedure would be fair and reasonable if it is fair and reasonable taking into

consideration all the facts and circumstances. This is intended to provide flexibility for nonprofit corporations. In addition, a safe harbor provision is included under subdivision 2, clauses (1) and (2), under which a specific procedure is authorized.

Language is included in subdivision 4, similar to the language in section 317A.409, dealing with resignation, to make it clear that a member will continue to be liable for dues, assessments, or fees or charges for goods or services.

This section does not deal with the substantive grounds for termination.

#### **SECTION 317A.413: PURCHASE OF MEMBERSHIPS**

##### **SOURCE:**

Model Act, section 6.22, as modified.

##### **FORMER MINNESOTA PROVISION:**

None.

##### **CHANGE FROM FORMER LAW:**

New provision.

##### **GENERAL COMMENT:**

This is similar to the Model Act, except that the Model Act provides that a public benefit or religious corporation may not purchase memberships. Since this act does not make a distinction between public benefit and mutual benefit corporations, it should be sufficient to allow a corporation to buy a membership, but only if authorized in its articles or bylaws.

#### **SECTION 317A.415: DELEGATES**

##### **SOURCE:**

Model Act, section 6.40.

##### **FORMER MINNESOTA PROVISION:**

None.

## CHANGE FROM FORMER LAW:

New provision.

## GENERAL COMMENT:

This authorizes a corporation to provide in its articles or bylaws for delegates having some or all of the authority of members. Comments to the Model Act note that this allows corporations to operate with delegates rather than or in addition to members or a self-perpetuating board. The comments also note that the law relating to delegates and their rights is not as well developed as the law relating to members or self-perpetuating boards, and as a result this section does not set forth detailed provisions. The articles or bylaws could have rules regarding the specific use and operation of delegates.

## SECTION 317A.431: ANNUAL MEETINGS OF VOTING MEMBERS

### SOURCE:

Former law; MBCA, section 302A.431; and Model Act, section 7.01.

### FORMER MINNESOTA PROVISION:

Minnesota Statutes, section 317.22, subdivision 2.

## CHANGE FROM FORMER LAW:

With the exception of subdivision 1, most of the provisions were not addressed in former law.

## GENERAL COMMENT:

A number of clarifying amendments were made to this section in 1990. References to a regular meeting were changed to an annual meeting.

Subdivision 1, dealing with frequency of member meetings, is based on former law in section 317.22, subdivision 2.

Subdivision 2, dealing with demand by members for an annual meeting, is based on the MBCA, section 302A.431, subdivision 2, and allows 50 members with voting rights or ten percent of the members with voting rights, whichever is less, to demand an annual meeting of members if one has not been held during the preceding 15 months.



Subdivision 3, dealing with the time and place of member meetings, is based on the MBCA, section 302A.431, subdivision 3 (when a demand for a meeting is held) and the Model Act, section 7.01, paragraph (c) (when no place is fixed in the articles or bylaws).

Subdivision 4, dealing with elections and business at an annual meeting of members, is taken from the MBCA, section 302A.431, subdivision 4, and the Model Act, section 7.01, paragraph (d).

Subdivision 5, which provides that the failure to hold a meeting does not affect the validity of a corporate action, is taken from the Model Act, section 7.01, paragraph (f).

### **SECTION 317A.433: SPECIAL MEETINGS OF VOTING MEMBERS**

#### **SOURCE:**

Model Act, section 7.02; MBCA, section 302A.433, subdivisions 2, 3, and 4.

#### **FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.22, subdivision 3.

#### **CHANGE FROM FORMER LAW:**

Former law allowed two or more members to call a special meeting. This act requires at least 50 members with voting rights or ten percent of the members with voting rights, whichever is less. The time periods in section 317.22, subdivision 3, also are modified to make this consistent with the MBCA.

Former law also authorized the president to call a special meeting. This provision is not included.

#### **GENERAL COMMENT:**

Under subdivision 1, a special meeting could be requested by the board or persons authorized to do so in the articles or bylaws, or by at least 50 members with voting rights or ten percent of the members with voting rights, whichever is less. The number of members required to call a special meeting is increased from former law, consistent with the threshold number being used throughout the act (see the comments to section 317A.165).

The notice periods under subdivision 2 are based on the MBCA, section 302A.433, subdivision 2.

Subdivision 3, dealing with the time and place of special meetings, is taken from the MBCA, section 302A.433, subdivision 3.

The provisions of subdivision 4, dealing with the limited business at a special meeting are taken from the MBCA, section 302A.433, subdivision 4. The notice provisions are taken from the MBCA, section 302A.435, subdivision 3.

#### **SECTION 317A.434: COURT-ORDERED MEETING OF VOTING MEMBERS**

**SOURCE:**

Model Act, section 7.03.

**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**GENERAL COMMENT:**

This is a new provision that allows members or another person entitled to participate in the annual meeting to seek a court order for a meeting of voting members under certain circumstances. The Model Act allows any member to bring an action, and also includes the attorney general, while this section requires at least 50 members with voting rights or ten percent of the members with voting rights, whichever is less. Note that the attorney general may bring an action under section 317A.467, seeking equitable remedies.

#### **SECTION 317A.435: NOTICE REQUIREMENTS**

**SOURCE:**

MBCA, section 302A.435; Model Act, section 7.05; former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, sections 317.22, 317.24 (also section 317.02, subdivision 6, defines "notice").

**CHANGE FROM FORMER LAW:**

A number of new provisions are included. The publication provision under section 317.02, subdivision 6, is not included.

**GENERAL COMMENT:**

Subdivision 1, dealing with to whom notice must be given, is based on the MBCA, section 302A.435, subdivision 1, and the Model Act, section 7.05. A record date will be determined under section 317A.437 for purposes of determining who is entitled to vote. This language is taken from the Model Act.

Subdivision 2, dealing with when notice must be given and the contents of the notice, is taken from the MBCA, section 302A.435, subdivisions 2 and 3. The language requiring the notice to inform members if proxies are permitted is the provision that was added to section 317.22, subdivision 4, in 1988.

A 1990 amendment increased the 30-day cap on the notice period to 60 days, making it consistent with the time periods established under section 317A.431, dealing with a demand for a member meeting.

Subdivision 3, dealing with waiver of notice and objections, is based on the MBCA, section 302A.435, subdivision 4. The former waiver provisions were contained in section 317.24, under which a waiver had to be written. This provision allows a waiver to be given orally.

**SECTION 317A.437: RECORD DATE; DETERMINING MEMBERS  
ENTITLED TO NOTICE AND VOTE**

**SOURCE:**

MBCA, section 302A.445, subdivision 1; Model Act, section 7.07, paragraphs (e) and (f).

**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**GENERAL COMMENT:**

Subdivision 1 is based on the MBCA, section 302A.445, subdivision 1, dealing with determination of the members entitled to notice of and entitled to vote at a meeting.

The special provisions in subdivision 2, dealing with an adjourned meeting, are taken from the Model Act, except that the board must fix a new date if the meeting is adjourned to a date more than 60 days after the record date, instead of 70 days.

**SECTION 317A.439: MEMBERS LIST FOR MEETING**

**SOURCE:**

Model Act, section 7.20; MBCA, section 302A.461, subdivision 4b.

**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**GENERAL COMMENT:**

Subdivisions 1 to 4 are based on the Model Act, except that provisions in the Model Act that relate to a separate record date for determining members entitled to vote, but not entitled to notice, are not included.

Subdivision 5, prohibiting improper use of a membership list, is based on the MBCA, section 302A.461, subdivision 4b.

**SECTION 317A.441: RIGHT TO VOTE**

**SOURCE:**

Model Act, section 7.21.

**FORMER MINNESOTA PROVISION:**

*See* section 317.22, subdivision 7, clause (5).

**CHANGE FROM FORMER LAW:**

Substantially a new provision.

**GENERAL COMMENT:**

This is based on the Model Act, section 7.21. The comments note that it sets forth the basic rule that each member is entitled to one vote unless the articles or bylaws provide otherwise. Special provisions are included for cases where a single membership is held by two or more persons.

**SECTION 317A.443: ACT OF THE MEMBERS**

**SOURCE:**

Model Act, section 7.23; former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.22, subdivision 5 and subdivision 7, clause (3).

**CHANGE FROM FORMER LAW:**

No significant substantive change.

**GENERAL COMMENT:**

This is based on the Model Act, section 7.23, and generally expands on the provisions under former law in section 317.22, subdivision 5.

A 1990 amendment moved the last sentence of subdivision 1, dealing with bylaw amendments to increase or decrease the vote required for a member action, to section 317A.181, subdivision 2.

Subdivision 2, dealing with the methods by which members may act, is similar to section 317.22, subdivision 7, clause (3), except that it includes all the ways that members may take action in the succeeding sections.

**SECTION 317A.445: UNANIMOUS ACTION WITHOUT A MEETING**

**SOURCE:**

MBCA, section 302A.441; former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.22, subdivision 9.

**CHANGE FROM FORMER LAW:**

No significant substantive change, except that it refers to an action being signed by all the members entitled to vote, rather all the members entitled to notice of the meeting.

**SECTION 317A.447: ACTION BY WRITTEN BALLOT**

**SOURCE:**

Model Act, section 7.08.

**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**GENERAL COMMENT:**

Comments to the Model Act note that this section authorizes election of directors and approval of actions by written ballot. The ballots must be distributed to every member, provide specific information, and allow a reasonable time for their return. The comments also note that action by written ballot may not serve as a substitute for an annual or special meeting of members.

**SECTION 317A.449: ACTION BY ELECTRONIC COMMUNICATION**

**SOURCE:**

Former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.22, subdivision 11.

**CHANGE FROM FORMER LAW:**

None.

**SECTION 317A.451: QUORUM**

**SOURCE:**

Former law, as modified.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, sections 317.22, subdivision 5, and 317.23, subdivision 1.

**CHANGE FROM FORMER LAW:**

Former law required 20 percent of the voting membership for a quorum when the meeting was by mail vote, which is not included in the new statute.

**SECTION 317A.453: PROXIES**

**SOURCE:**

Model Act, section 7.24; former law as modified; MBCA, section 302A.449, subdivision 5 and 6.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.22, subdivision 6.

**CHANGE FROM FORMER LAW:**

The presumption is switched so that proxy voting will not be permitted unless authorized in the articles or bylaws. A proxy will not be valid for more than three years from its date of execution. Other new provisions are included.

**GENERAL COMMENT:**

Under subdivision 1, proxy voting will be permitted if provided for in the articles or bylaws. This was the subject of some discussion in light of the 1988 law that requires the meeting notice to inform the members if proxy voting is allowed. Because many corporations may not know that they have proxy voting, it was felt that the notice provision could provide a trap for unwary corporations. By switching

the presumption, corporations are more likely to know if they have proxy voting when it is specifically provided for in the articles or bylaws.

With this exception, most of the provisions of this section are very similar to the Model Act, section 7.24, and the MBCA, section 302A.449, subdivisions 5 and 6, as well as former law.

A 1990 amendment removed references to a secretary in this section and section 317A.455, since this is not a required officer of a corporation.

#### **SECTION 317A.455: CORPORATIONS ACCEPTANCE OF MEMBER ACT**

##### **SOURCE:**

Model Act, section 7.27.

##### **FORMER MINNESOTA PROVISION:**

None.

##### **CHANGE FROM FORMER LAW:**

New provision.

##### **GENERAL COMMENT:**

The Model Act notes that this section sets forth the rules under which corporations may accept acts as those of a member or someone authorized to act on behalf of the member. It is designed to provide certainty and to protect corporations and their officers and agents who act in good faith in reliance on its rules.

The comments also note that the phrase "reasonable basis for doubt" used in subdivision 3 creates an objective standard for exercise of the authority to reject certain instruments.

#### **SECTION 317A.457: VOTING AGREEMENTS**

##### **SOURCE:**

Model Act, section 7.30, as modified.



**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**GENERAL COMMENT:**

This is very similar to the Model Act, section 7.30, with two differences. First, voting agreements will be authorized only to the extent permitted in the articles or bylaws. In addition, a voting agreement will not be effective until it is filed with the corporation.

**SECTION 317A.461: BOOKS AND RECORDS; FINANCIAL STATEMENT**

**SOURCE:**

Former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.28.

**CHANGE FROM FORMER LAW:**

No significant substantive change.

**GENERAL COMMENT:**

This is very similar to former law. In addition to the items already required to be kept at the registered office, copies of the corporation's articles and bylaws are included.

**SECTION 317A.467: EQUITABLE REMEDIES**

**SOURCE:**

MBCA, section 302A.467, as modified.

**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**GENERAL COMMENT:**

See the comments to the MBCA. In general, this section provides broad authority for equitable relief by a court. The MBCA comments note that it recognizes that the situations in which relief may be appropriate are not readily definable and therefore it adopts a broad rule that gives the court complete discretion. The only significant change from the MBCA is that the attorney general also has authority to bring an action.

**LOANS; OBLIGATIONS**

**SECTION 317A.501: LOANS; GUARANTEES; SURETYSHIP**

**SOURCE:**

MBCA, section 302A.501, as modified; Model Act, section 8.32, paragraph (b); Hamline article, sections 6.5, subdivision 2, and 9.1; former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.16 (powers); section 317.18.

**CHANGE FROM FORMER LAW:**

The most significant change from former law is that a corporation may make loans to officers or directors under certain circumstances.

**GENERAL COMMENT:**

Subdivision 1, dealing with the prerequisites for corporate loans, guarantees, and suretyships, is based on the MBCA, section 302A.501, subdivision 1, with some changes. Under the first paragraph, pledging assets as security for an obligation is included under the scope of this section. There was some concern that a corporation might grant a security interest in all or substantially all of its property or assets in order to guarantee the obligation of another person and try to come under the more lenient requirements of section 317A.661, dealing with transfer of assets.

This language, in addition to a cross reference in section 317A.661, is intended to make it clear that guarantees will always have to meet the requirements of this section.

Under clause (3), loans or guarantees on behalf of an officer, director, or employee will have to meet the requirements of subdivision 2. Under clause (4), if there are no members with voting rights, two-thirds of the board may approve a transaction.

Subdivision 2 contains the special rules for loans and guarantees for officers, directors, and employees. It is a modified version of the MBCA, section 302A.501, subdivision 1, paragraph (c), dealing with loans to an officer or employee. Immediate relatives of a director, officer, or employee are included in this section as well. The language providing that if a loan or guarantee is made in violation of this subdivision, the borrower's liability is not affected, is based on the Model Act, section 8.32, paragraph (b) (however, the Model Act does not authorize loans to directors or officers). The liability language is taken from the Hamline article, sections 6.5, subdivision 2 and 9.1.

Subdivisions 3 and 4 are based on the MBCA, section 302A.501, subdivisions 2 and 3.

#### **SECTION 317A.505: ADVANCES**

##### **SOURCE:**

MBCA, section 302A.505.

##### **FORMER MINNESOTA PROVISION:**

None.

##### **CHANGE FROM FORMER LAW:**

New provision.

#### **SECTION 317A.521: INDEMNIFICATION**

##### **SOURCE:**

Former law; MBCA, section 302A.521.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 300.083.

**CHANGE FROM FORMER LAW:**

None.

**GENERAL COMMENT:**

This is identical to the provisions in former law for both nonprofit corporations and business corporations.

**MERGER; CONSOLIDATION; TRANSFER**

**SECTION 317A.601: MERGER, CONSOLIDATION, OR TRANSFER**

**SOURCE:**

Former law; MBCA, section 302A.601; and new provisions.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, sections 317.26, 317.31, and 317.32.

**CHANGE FROM FORMER LAW:**

The notice to the attorney general under subdivision 3 is new.

**GENERAL COMMENT:**

Under subdivision 3, a corporation that holds assets for a public or charitable purpose or a corporation that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code will have to notify the attorney general before it may merge or consolidate or transfer all or substantially all of its assets (unless the transaction is with a 501(c)(3) corporation). These provisions are discussed in more detail under section 317A.811.

Note that consolidations are no longer used in the MBCA. However, this option is retained for nonprofit corporations.

**SECTION 317A.611: PLAN OF MERGER OR CONSOLIDATION**

**SOURCE:**

MBCA, section 302A.611, subdivision 1, as modified; former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.33.

**CHANGE FROM FORMER LAW:**

No significant substantive change; former law referred to an agreement rather than a plan.

**SECTION 317A.613: PLAN APPROVAL**

**SOURCE:**

Former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.34.

**CHANGE FROM FORMER LAW:**

No significant change.

**SECTION 317A.615: ARTICLES OF MERGER OR CONSOLIDATION;  
CERTIFICATE**

**SOURCE:**

MBCA, section 302A.615, as modified; and former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.36.

**CHANGE FROM FORMER LAW:**

No significant substantive change.

**GENERAL COMMENT:**

Note that under subdivision 1, the articles of merger or consolidation must contain a statement that the notice to the attorney general required by section 317A.811 has been given and that the waiting period has expired or has been waived by the attorney general. Under a 1990 amendment, if the notice requirement is not applicable, the articles must include a statement to that effect.

**SECTION 317A.631: ABANDONMENT**

**SOURCE:**

MBCA, section 302A.631, as modified.

**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**SECTION 317A.641: EFFECTIVE DATE OF MERGER OR  
CONSOLIDATION; EFFECT**

**SOURCE:**

Former law; MBCA, section 302A.641.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, sections 317.37, 317.38, and 317.39.

**CHANGE FROM FORMER LAW:**

No significant substantive change; new provisions from the MBCA are included.

**GENERAL COMMENT:**

This combines appropriate provisions from both former law and the MBCA.

**SECTION 317A.643: CONTINUANCE OF CORPORATE AUTHORITY**

**SOURCE:**

Former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.40.

**CHANGE FROM FORMER LAW:**

None.

**SECTION 317A.651: MERGER OR CONSOLIDATION WITH FOREIGN CORPORATION**

**SOURCE:**

MBCA, section 302A.651, as modified.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.42.

**CHANGE FROM FORMER LAW:**

No significant substantive change.

**SECTION 317A.661: TRANSFER OF ASSETS; WHEN PERMITTED**

**SOURCE:**

MBCA, section 302A.661, as modified; former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.26.

**CHANGE FROM FORMER LAW:**

The most significant change from former law is that the approval of the voting members will be required only in cases where the corporation is transferring

all or substantially all of its assets, including its goodwill, not in the usual and regular course of activities.

**GENERAL COMMENT:**

Under subdivision 1, a cross reference is included to section 81 (317A.501), subdivision 1, dealing with loans and obligations, to make it clear that the requirements of that section will still have to be met, if applicable.

Subdivision 3 refers to the notice to the attorney general that is required before certain corporations may transfer all or substantially all of their assets.

Note that merely granting a security interest in all or substantially all of a corporation's assets should not be considered a transfer of assets for purposes of this section and section 317A.811.

**SECTION 317A.671: CERTAIN ASSETS NOT TO BE DIVERTED**

**SOURCE:**

Former law, as modified.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, sections 317.26, subdivision 3, and 317.38, clause (10).

**CHANGE FROM FORMER LAW:**

No substantive change.

**GENERAL COMMENT:**

This combines provisions of former law prohibiting a corporation from diverting assets from their original uses in the context of a dissolution, merger or consolidation, or transfer of assets.

**DISSOLUTION**

**SECTION 317A.701: METHODS OF DISSOLUTION**

**SOURCE:**

MBCA, section 302A.701, as modified.



**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.44.

**CHANGE FROM FORMER LAW:**

There were only two methods of dissolution under former law: if there were no substantial assets, a corporation could dissolve out-of-court (although it still needed a court order to allow out-of-court dissolution); in all other cases dissolution was conducted under court supervision. The new act authorizes dissolution by the incorporators if the first board of directors has not been named, by the board and members with voting rights, by court order, or by the Secretary of State if the corporation fails to comply with the annual registration requirements.

**GENERAL COMMENT:**

This section contains an index to the different methods of dissolution. Note that under paragraph (a), dissolution by the incorporators, by the board and members with voting rights, or by the court would be subject to the notice to the Attorney General in section 317A.811.

In general, the existing dissolution procedures are updated and simplified, making them more consistent with some of the provisions in the MBCA. However, at the same time some special supervision of dissolutions seems desirable, at least in cases involving corporations holding charitable assets or corporations that are exempt under section 501(c)(3) of the Internal Revenue Code. Although these corporations will not be required to go to court, they will have to give notice of intent to dissolve to the Attorney General on or before the time that the notice is filed with the Secretary of State.

Note that under section 317A.741, the corporation, the Attorney General, or, for good cause, a creditor or at least 50 members with voting rights or ten percent of the members with voting rights, whichever is less, will always have the option of applying for a court supervised dissolution.

**SECTION 317A.711: VOLUNTARY DISSOLUTION BY  
INCORPORATORS**

**SOURCE:**

MBCA, section 302A.711.

**FORMER MINNESOTA PROVISION:**

No provision.

**CHANGE FROM FORMER LAW:**

New provision.

**GENERAL COMMENT:**

This is based on the MBCA, section 302A.711, and provides for voluntary dissolution by the incorporators when the first board of directors has not been named in the articles, designated or appointed, or elected.

**SECTION 317A.721: VOLUNTARY DISSOLUTION BY BOARD AND MEMBERS WITH VOTING RIGHTS**

**SOURCE:**

MBCA, section 302A.721; Model Act, sections 14.01 and 14.02; and former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.45 and 317.46.

**CHANGE FROM FORMER LAW:**

The provisions in subdivisions 2 and 3, providing for approval of the plan of dissolution by the board and by the members with voting rights, are based on former law in section 317.46, subdivisions 2 and 3. As noted in the comments under section 317A.701, in other respects the dissolution provisions are substantially new.

**GENERAL COMMENT:**

This follows the general form of the MBCA, section 302A.621, but incorporates the provisions of former law in section 317.46, subdivisions 1 and 2, dealing with approval of the dissolution by the board and by members with voting rights.

Under subdivision 2, the board's resolution must include a plan of dissolution that states to whom the assets owned or held by the corporation will be distributed after creditors are paid. It must comply with the requirements of section 317A.735,

dealing with distribution of assets. The provisions dealing with the plan of dissolution are taken from the Model Act, section 14.01.

**SECTION 317A.723: FILING NOTICE OF INTENT TO DISSOLVE;  
EFFECT**

**SOURCE:**

MBCA, section 302A.723, as modified.

**FORMER MINNESOTA PROVISION:**

None. (See sections 317.45 and 317.46).

**CHANGE FROM FORMER LAW:**

The dissolution procedures are substantially new.

**GENERAL COMMENT:**

Once the dissolution is approved by the corporation under section 317A.721, the corporation will file a notice of intent to dissolve with the Secretary of State. If applicable, the corporation also must notify the Attorney General under section 317A.811.

**SECTION 317A.725: PROCEDURE IN DISSOLUTION**

**SOURCE:**

MBCA, section 302A.725, as modified.

**FORMER MINNESOTA PROVISION:**

See section 317.55.

**CHANGE FROM FORMER LAW:**

Substantially new; section 317.55 dealt with the powers of a liquidating receiver.

#### **GENERAL COMMENT:**

This section contains the general procedure to be followed in dissolution, and is based on the MBCA. The most significant distinction is under subdivision 3, dealing with distribution of assets. Business corporations distribute their assets to the shareholders once all of their obligations are paid. However, nonprofit corporations are prohibited from distributing money to their members, and therefore the assets must be distributed in accordance with section 317A.735.

#### **SECTION 317A.727: NOTICE TO CREDITORS AND CLAIMANTS**

##### **SOURCE:**

MBCA, section 302A.727.

##### **FORMER MINNESOTA PROVISION:**

See Minnesota Statutes, sections 317.50 (hearing notice) and 317.56 (claims).

##### **CHANGE FROM FORMER LAW:**

This is basically a new provision, although under section 317.56, subdivision 3, the liquidating receiver published an order for liquidation once a week for three weeks. Notice to creditors under this section would be given once a week for four weeks.

#### **GENERAL COMMENT:**

This is an optional provision under which the corporation may give notice to creditors. Known creditors of the corporation must receive notice in accordance with section 317A.011, subdivision 14 (the definition of "notice"), in addition to the published notice. Notice is published for other creditors. If notice is given under this section, then the provisions of section 317A.729, dealing with the presentation of the claims by the creditors, govern the corporation's disposition of the claims. Section 317A.730, subdivision 1, contains the statute of limitations for corporations that give notice under this section.

#### **SECTION 317A.729: CLAIMS IN DISSOLUTION**

##### **SOURCE:**

MBCA, section 302A.729.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.56.

**CHANGE FROM FORMER LAW:**

The time periods for presentation of claims are modified. Note that under section 317A.727, subdivision 2, creditors must present their claims 90 days after notice. If notice is not given, under section 317A.730, subdivision 2, a claim could be filed within two years after the date of filing the notice of intent to dissolve. Former law in section 317.56, subdivision 1, contained the general time limits for presentation of claims, which were fixed by the court.

**GENERAL COMMENT:**

This is based on the MBCA, section 302A.730. Basically, two different statutes of limitations may apply to claims, depending on whether the corporation gives notice to creditors. If notice to creditors is given, the creditors must make their claims within 90 days after published notice, or within 90 days after written notice is actually given to a known creditor (see section 317A.727, subdivision 2). Note that under section 317A.781, subdivision 2, within one year after the articles of dissolution are filed with the Secretary of State, or a decree of dissolution has been entered by a court, a creditor or claimant who shows good cause for not having previously filed a claim may apply to a court to allow a claim to proceed to the extent of undistributed assets.

**SECTION 317A.730: STATUTE OF LIMITATIONS**

**SOURCE:**

MBCA, section 302A.730.

**FORMER MINNESOTA PROVISION:**

See section 317.56.

**CHANGE FROM FORMER LAW:**

Under former law, the court fixed the time for presentation of claims within the limits in section 317.56, subdivisions 1 and 2.

**GENERAL COMMENT:**

Subdivision 1 deals with corporations that give notice under section 317A.727 and provides that the claims are barred if the creditor fails to comply with the time periods in sections 317A.727 and 317A.729.

Subdivision 2 provides that if a corporation does not give notice under section 317A.727, claims must be brought within two years after the notice of intent to dissolve is filed.

**SECTION 317A.731: REVOCATION OF DISSOLUTION PROCEEDINGS**

**SOURCE:**

MBCA, section 302A.731, as modified.

**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**GENERAL COMMENT:**

This is based on the MBCA, except that the resolution must be approved by members only if there are members with voting rights. In addition, under subdivision 4, if notice to the Attorney General has been given under section 317A.811, the notice of revocation also must be given to the Attorney General.

**SECTION 317A.733: ARTICLES OF DISSOLUTION; CERTIFICATE OF DISSOLUTION; EFFECT**

**SOURCE:**

MBCA, section 302A.733.

**FORMER MINNESOTA PROVISIONS:**

Minnesota Statutes, sections 317.59 and 317.60.

## CHANGE FROM FORMER LAW:

Under former law, the court judged the corporation dissolved when the affairs were wound up and the liquidating receiver certified that fact to the court. The court's order was then filed with the Secretary of State. This section provides for articles of dissolution prepared by the corporation that will be filed with the Secretary of State.

## GENERAL COMMENT:

This is very similar to the MBCA, section 302A.733, with a few changes. Under subdivision 2, paragraph (b), the articles of dissolution must state that the assets of the corporation have been distributed under section 317A.735, dealing with distribution of assets. In addition, under paragraph (d), if applicable, the notice must state that the notice to the Attorney General required by section 317A.811 has been given and the waiting period has expired or has been waived by the Attorney General. Although this provision was not amended in 1990, if the notice requirement is not applicable, the articles probably should include a statement to that effect (see sections 317A.615, subdivision 1 and 317A.711, subdivision 2).

## SECTION 317A.735: DISTRIBUTION OF ASSETS

### SOURCE:

Former law, as modified.

### FORMER MINNESOTA PROVISION:

Minnesota Statutes, section 317.57.

## CHANGE FROM FORMER LAW:

Former law referred to distribution by the court, rather than by the board or officers acting under the direction of the board. The most significant substantive change in terms of the order of priority of distribution is that assets held for a special use or purpose must be distributed first. Former law distributed these assets after payment of the costs and expenses of dissolution, and payment of debts and obligations. However, if the corporation has limited assets, it would be improper to use assets held for a special use or purpose to pay costs and expenses or other obligations. Therefore, these assets must be distributed first according to that limitation. The provisions of former law in section 317.57, subdivision 1, clause (5), dealing with the distribution of assets for a charitable or public purpose, appear in slightly different form in subdivision 4, dealing with distribution of the remainder.

**GENERAL COMMENT:**

Note that a 1990 amendment rewrote subdivision 2, dealing with assets held for a special use or purpose, to make the language consistent with parallel language in section 317A.671.

**SECTION 317A.741: SUPERVISED VOLUNTARY DISSOLUTION**

**SOURCE:**

MBCA, section 302A.741, as modified.

**FORMER MINNESOTA PROVISION:**

See sections 317.44 to 317.46.

**CHANGE FROM FORMER LAW:**

This is substantially different from former law, which required all dissolutions to go through the court.

**GENERAL COMMENT:**

This is based on the MBCA, section 302A.741, with some changes. The attorney general, in addition to the corporation, will have authority to request a supervised voluntary dissolution by the court. In addition, for good cause, a creditor, or at least 50 members with voting rights or ten percent of the members with voting rights, whichever is less, may apply for a court-supervised dissolution (MBCA does not contain a threshold number of shareholders).

**SECTION 317A.751: JUDICIAL INTERVENTION; EQUITABLE  
REMEDIES OR DISSOLUTION**

**SOURCE:**

MBCA, sections 302A.751 and 302A.757; also see MBCA, section 302A.165 (c)(ultra vires acts; proceeding by attorney general); Model Act, section 14.30.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.62 (involuntary dissolution).



## CHANGE FROM FORMER LAW:

This section significantly expands the former provisions in section 317.62, under which the Attorney General could bring an action to involuntarily terminate a nonprofit corporation.

## GENERAL COMMENT:

Subdivisions 1 to 4 are based on the MBCA, section 302A.751, subdivision 1. It is important to note that this section does not deal just with dissolution of a corporation, but with any other equitable relief a court considers just and reasonable under the circumstances. It applies to a supervised voluntary dissolution, an action by at least 50 members with voting rights or ten percent of the members with voting rights, whichever is less, or an action by a creditor.

Subdivision 5 deals with actions by the attorney general, and combines provisions in section 302A.757, as well as former law in section 317.62, subdivision 2.

Subdivision 6, dealing with the condition of the corporation, is based on the MBCA, section 302A.751, subdivision 3.

Subdivision 7 deals with the court's consideration of whether dissolution or a lesser form of relief is appropriate. This is based on the MBCA, section 302A.751, subdivision 3b.

Subdivisions 8 and 9, dealing with expenses, venue, and parties, are taken from the MBCA, section 302A.751, subdivisions 4 and 5.

## **SECTION 317A.753: PROCEDURE IN INVOLUNTARY OR SUPERVISED VOLUNTARY DISSOLUTION**

### SOURCE:

MBCA, section 302A.753, as modified.

### FORMER MINNESOTA PROVISION:

See section 317.57, dealing with the manner of distribution of corporate assets by the court.

## CHANGE FROM FORMER LAW:

Substantially new provision.

**GENERAL COMMENT:**

This is very similar to the MBCA, section 302A.753, with a couple of differences. Under subdivision 2, if the proceeding involves a corporation described in section 317A.811, subdivision 1 (dealing with notice to the attorney general), the court must order a copy of the petition served on the attorney general. In all proceedings under this section, the attorney general has the right to participate as a party.

Under subdivision 5, the remainder of the corporation's assets must be distributed as provided in section 317A.735 (as opposed to distribution to the shareholders under the MBCA).

**SECTION 317A.755: QUALIFICATIONS OF RECEIVERS; POWERS**

**SOURCE:**

MBCA, section 302A.755.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.55.

**CHANGE FROM FORMER LAW:**

Former law did not specify who could be a receiver.

**SECTION 317A.759: FILING CLAIMS AND PROCEEDINGS TO  
DISSOLVE**

**SOURCE:**

MBCA, section 302A.759.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.56.

**CHANGE FROM FORMER LAW:**

Compare the time periods in section 317.56, subdivision 1 (see the discussion under sections 317A.725 to 317A.730).

**GENERAL COMMENT:**

This deals with the filing of claims in court-supervised dissolutions. The court will fix the date, which may not be less than 120 days from the date of its order, as the last day for the filing of claims and must provide for notice to creditors or claimants.

**SECTION 317A.763: DECREE OF DISSOLUTION**

**SOURCE:**

MBCA, section 302A.763, as modified.

**FORMER MINNESOTA PROVISION:**

See Minnesota Statutes, sections 317.59 and 317.60; also section 317.55, subdivision 4.

**CHANGE FROM FORMER LAW:**

This is similar to the provisions in former law when the court ordered dissolution. Under former law, the corporation was dissolved when the liquidating receiver filed the court's order with the Secretary of State. Under this section, in court-ordered dissolutions, the corporation is dissolved when the decree is entered.

**SECTION 317A.765: FILING DECREE**

**SOURCE:**

MBCA, section 302A.765.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.60.

**CHANGE FROM FORMER LAW:**

See the discussion under section 317A.763.

**SECTION 317A.771: DEPOSIT WITH STATE TREASURER OF  
AMOUNT DUE CERTAIN PERSONS**

**SOURCE:**

MBCA, section 302A.771.

**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**GENERAL COMMENT:**

This is based on the MBCA, and allows the corporation to deposit certain money with the state treasurer when part of the assets are distributable to a person who is unknown or cannot be found, or is under disability.

**SECTION 317A.781: CLAIMS BARRED; EXCEPTIONS**

**SOURCE:**

MBCA, section 302A.781.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.56.

**CHANGE FROM FORMER LAW:**

Note that under former law in section 317.56, subdivision 2, the court could extend the time for filing claims to within 18 months from the date of the order for the liquidation of the corporate affairs, if the creditor showed sufficient cause. Under subdivision 2 of this section, within one year after the articles of dissolution have been filed, a creditor or claimant who shows good cause may apply to the court to allow a claim to the extent of undistributed assets.

**GENERAL COMMENT:**

See sections 317A.727 (notice to creditors and claimants); 317A.729 (claims in dissolution); 317A.730 (statute of limitations); and 317A.741, 317A.751, and 317A.759

(supervised voluntary dissolution; judicial intervention; filing claims), for the different time periods during which claims must be presented.

**SECTION 317A.783: RIGHT TO SUE OR DEFEND AFTER DISSOLUTION**

**SOURCE:**

MBCA, section 302A.783.

**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW**

New provision.

**SECTION 317A.791: OMITTED ASSETS**

**SOURCE:**

MBCA, section 302A.791.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.61.

**CHANGE FROM FORMER LAW:**

Former law provided that the liquidating receiver had title to the omitted assets and could distribute them. This provides that the title may be transferred by a court in this state.

**EXTENSION**

**SECTION 317A.801: EXTENSION AFTER DURATION EXPIRED**

**SOURCE:**

MBCA, section 302A.801, as modified.

**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**GENERAL COMMENT:**

This is nearly identical to the MBCA, section 302A.801, except that under subdivision 3, the amendment to the articles to extend the duration of the corporation must be submitted to the members only if there are members with voting rights.

**SECTION 317A.805: EFFECT OF EXTENSION**

**SOURCE:**

MBCA, section 302A.805.

**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**ATTORNEY GENERAL**

**SECTION 317A.811: NOTICE TO ATTORNEY GENERAL; WAITING PERIOD**

**SOURCE:**

New provision; see the Model Act, sections 14.03 (notices to Attorney General upon dissolution) and 17.07 (definition of "public benefit corporation").

**FORMER MINNESOTA PROVISION:**

None; see section 317.52 (Attorney General may intervene).

## CHANGE FROM FORMER LAW:

New provision.

## GENERAL COMMENT:

This is a new provision that requires corporations that hold assets for a charitable purpose, or that are exempt under section 501(c)(3) of the Internal Revenue Code, to notify the Attorney General when they plan to dissolve, and, in some cases, merge, consolidate, or transfer all or substantially all of their assets.

The notice requirement was chosen as a reasonable alternative to court supervision of dissolutions. Given the state's interest in assets held for a charitable purpose, imposing this additional requirement on certain nonprofit corporations is appropriate.

Mergers, consolidations, or transfers of all or substantially all of the assets of a corporation also are included within the scope of this section. Otherwise, these other transactions could be used instead of a dissolution as a means of avoiding the notice requirements.

Subdivision 1 contains the general notice requirements. The 1989 law required the notice to the Attorney General to include the plan of dissolution, merger or consolidation, or in the case of a transfer of assets, a list of the persons to whom the assets would be transferred and the terms and conditions of the transfer. A 1990 amendment modified this provision and spells out the contents of the notice. The notice also must be signed on behalf the corporation by an authorized person.

The scope of the corporations covered by this section is similar to the definition of a "public benefit corporation" under section 17.07 of the Model Act. Section 14.03 of the Model Act requires a public benefit corporation to notify the Attorney General if it intends to dissolve. Under the Model Act, the notice must include a copy or summary of the plan, similar to the requirements of subdivision 1 of this section.

Subdivision 2 provides that a corporation described in subdivision 1 may not transfer or convey assets until 45 days after it has given written notice to the Attorney General, unless the Attorney General waives all or part of the waiting period.

Subdivision 3 authorizes the Attorney General to extend the waiting period under subdivision 2 for one additional 30-day period.

Subdivision 4 provides that when all or substantially all of the assets of the corporation have been transferred or conveyed following expiration of the waiting period, the board must deliver to the Attorney General a list of the persons to whom the assets were transferred or conveyed. A 1990 amendment removed a reference to approval by the Attorney General, since this section does not require approval but only imposes a waiting period.

Subdivision 5 makes it clear that failure of the Attorney General to take an action with respect to a transaction under this section does not constitute approval of the transaction and does not prevent the Attorney General from taking other action (such as exercising remedial powers under section 317A.813).

Subdivision 6 provides an exception to the notice requirement in cases involving a merger or consolidation with, or transfer of assets to, a 501(c)(3) corporation. The corporation will be required to send a copy of the certificate of merger or certificate of consolidation and incorporation to the attorney general.

#### **SECTION 317A.813: REMEDIAL POWERS OF ATTORNEY GENERAL**

##### **SOURCE:**

New provision.

##### **FORMER MINNESOTA PROVISION:**

None.

##### **CHANGE FROM FORMER LAW:**

New provision.

##### **GENERAL COMMENT:**

This section was added to make it clear that the Attorney General has the powers in section 8.31, which is the general section dealing with the investigatory and enforcement powers of the Attorney General, and sections 501B.40 and 501B.41, dealing with the supervision of charitable trusts, to supervise and investigate nonprofit corporations and bring proceedings to secure compliance. Minnesota Statutes, section 8.31, also was amended to include the Minnesota Nonprofit Corporation Act.



## CORPORATE REGISTRATION

### SECTION 317A.821: INITIAL CORPORATE REGISTRATION WITH SECRETARY OF STATE

#### SOURCE:

New provision (see MBCA, section 302A.821).

#### FORMER MINNESOTA PROVISION:

None.

#### CHANGE FROM FORMER LAW:

New provision.

#### GENERAL COMMENT:

The corporate registration requirements in sections 317A.821 and 317A.823 are new, and are based on the requirements in the MBCA. The initial corporate registration process in this section is unique. This procedure is intended to allow the Secretary of State to survey the nonprofit corporations that are in its records and determine if they are actually in existence or still active. Before February 1, 1990, the Secretary of State was required to mail a corporate registration form to every corporation. Corporations that fail to respond lose their good standing. If they fail to regain their good standing on or before December 31, 2000, they may be dissolved administratively by the Secretary of State under section 317A.827.

In addition, as part of the initial registration process under this section, a corporation may elect to dissolve immediately if it has assets valued at \$1,000 or less (see subdivision 4). It must state that it wishes to be dissolved on the initial registration form, and state that it has assets valued at \$1,000 or less and that any assets will be disposed in accordance with section 317A.735 (the general section dealing with distribution of assets upon dissolution). The notice to the Attorney General does not apply to dissolutions under this subdivision.

A 1990 amendment waived the \$35 filing fee for a change of registered office address as part of the registration process if the address is being changed only because of a failure to comply with the requirements of the definition of "address" in section 317A.011, subdivision 2. Because the address requirements have become more detailed, this will allow some corporations to list things like a street address or zip code without paying a filing fee. If the registered office has actually moved, then a filing fee will be required.

**SECTION 317A.823: ANNUAL CORPORATE  
REGISTRATION**

**SOURCE:**

MBCA, section 302A.821, as modified.

**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**GENERAL COMMENT:**

This section is very similar to the MBCA, and is an ongoing annual corporate registration. The main difference from the MBCA is that the registration will be given to the Secretary of State, rather than the Commissioner of Revenue.

Under subdivision 1, before February 1 of each year, the Secretary of State will mail a corporate registration form to every corporation that incorporated or filed a corporate registration during either of the two previous calendar years. The only information required on the registration is the exact legal corporate name and registered office address of the corporation. It must be signed by an authorized person. If the corporation has changed its registered office address, it must list the new registered office address on the registration form and a fee must be paid for filing the registered office address change. Unless there is a change of registered office address, no fee will be required as part of the annual registration.

Under subdivision 2, a corporation that does not file a corporate registration during a calendar year loses its good standing. To regain its good standing, it must file the annual corporate registration and pay a \$35 fee. If a corporation loses its good standing, its corporate name or a name that is not distinguishable may be registered by another person before it regains its good standing. If the name is registered by another person, the corporation must obtain the consent of the other person or adopt a new corporate name.

Under subdivision 3, if a corporation fails to file a report for three consecutive calendar years, the Secretary of State must notify the corporation that it has violated this section and is subject to administrative dissolution under section 317A.827 if the delinquent registration is not filed with a fee within 60 days after mailing of the notice. A corporation that fails to file the delinquent annual

registrations within 60 days will be dissolved under section 317A.827. Note that a 1990 amendment increased the failure to file threshold for administrative dissolution from two years to three years, and decreased the delinquent filing fee from \$35 to \$25, consistent with the requirements that apply to business corporations.

**SECTION 317A.825: ACCEPTANCE OF REGISTRATION BY  
SECRETARY OF STATE**

**SOURCE:**

New provision (*see* Laws 1989, chapter 236).

**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision (also *see* Laws 1989, Chapter 236, section 1, and Minnesota Statutes, section 5.17, which include similar language for all filings with the Secretary of State).

**GENERAL COMMENT:**

This authorizes the Secretary of State to accept registrations that are in substantial compliance with sections 317A.821 and 317A.823, even if information is not identical to information in the records of the Secretary of State. For example, if a corporation lists its address as Minneapolis, Minnesota, instead of Bloomington, Minnesota, the Secretary of State may still accept the registration.

**SECTION 317A.827: ADMINISTRATIVE DISSOLUTION**

**SOURCE:**

MBCA, section 302A.821, subdivision 5.

**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**GENERAL COMMENT:**

Under subdivision 1, the Secretary of State will dissolve a corporation that requests dissolution as part of the initial registration under section 317A.821, fails to file the initial registration by December 31, 2000, or fails to file the delinquent annual registrations before expiration of the 60-day period in section 317A.823, subdivision 3. The Secretary of State will immediately issue a certificate of dissolution and file it in its office. The original and a notice must be sent to the registered office of the dissolved corporation. The Secretary of State will annually inform the Attorney General of the names of corporations dissolved under this section and indicate whether the dissolution was voluntary or involuntary. A corporation dissolved under this section will not be entitled to the benefits of section 317A.781, subdivision 1 (claims barred).

Subdivision 2 provides that a corporation dissolved under this section continues in existence for three years after the dissolution date for the sole purpose of supervision, investigation, and other actions by the Attorney General.

**ACTIONS AGAINST CORPORATIONS**

**SECTION 317A.901: SERVICE OF PROCESS ON CORPORATION**

**SOURCE:**

MBCA, section 302A.901.

**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**SECTION 317A.903: STATE INTERESTED; PROCEEDINGS**

**SOURCE:**

MBCA, section 302A.917.

**FORMER MINNESOTA PROVISION:**

None.

**CHANGE FROM FORMER LAW:**

New provision.

**SPECIAL PROVISIONS**

**SECTION 317A.905: CHAMBERS OF COMMERCE, BOARDS OF  
TRADE, EXCHANGES**

**SOURCE:**

Former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.64.

**CHANGE FROM FORMER LAW:**

None.

**SECTION 317A.907: CORPORATIONS TO SECURE OR MAINTAIN  
HOMES FOR DEPENDENT CHILDREN**

**SOURCE:**

Former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.65.

**CHANGE FROM FORMER LAW:**

None.

**SECTION 317A.909: CORPORATIONS FOR RELIGIOUS PURPOSES**

**SOURCE:**

Former law.

**FORMER MINNESOTA PROVISION:**

Minnesota Statutes, section 317.66.

**CHANGE FROM FORMER LAW:**

None.