

**CHAPTER 10-36
NONPROFIT LIMITED LIABILITY COMPANY ACT**

10-36-01. Citation.

This chapter may be cited as the North Dakota Nonprofit Limited Liability Company Act.

10-36-02. Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "Foreign nonprofit limited liability company" means a nonprofit limited liability company which is organized under laws other than the laws of this state for a purpose for which a nonprofit limited liability company may be organized under this chapter.
2. "Nonprofit limited liability company" means a nonprofit limited liability company, other than a foreign nonprofit limited liability company, that is organized under or governed by this chapter.

10-36-03. Applicability of chapters 10-32 and 10-33.

1. In any case not provided for in this chapter, chapter 10-33 governs.
2. In applying chapter 10-33 to a nonprofit limited liability company and unless the context otherwise requires, all references in chapter 10-33 to:
 - a. "Board" refers to the board of governors.
 - b. "Corporation" refers to a nonprofit limited liability company.
 - c. "Director" refers to a governor.
 - d. "Foreign corporation" refers to a foreign nonprofit limited liability company.
 - e. "Officer" refers to a manager.
3. Section 10-32-10 applies to the name of a nonprofit limited liability company as if it were a limited liability company governed under chapter 10-32.

10-36-04. Tax status of a nonprofit limited liability company.

The status of a nonprofit limited liability company under this chapter is not determinative of its tax treatment.

10-36-05. Limitations on persons who may be members.

An individual may not be a member of, or own any financial rights or governance rights in, a nonprofit limited liability company.

10-36-06. Notice to and authority of attorney general.

The attorney general has the same authority and powers with regard to a nonprofit limited liability company as the attorney general has with regard to a corporation governed by chapter 10-33, including sections 10-33-121, 10-33-122, 10-33-137, 10-33-144, 10-33-145, 10-33-146, 10-33-147, 10-33-148, and 10-33-149.

10-36-07. Secretary of state - Annual report of nonprofit limited liability companies and foreign nonprofit limited liability companies.

1. Each nonprofit limited liability company, and each foreign nonprofit limited liability company authorized to conduct activities in this state, shall file, within the time provided in subsection 3, an annual report setting forth:
 - a. The name of the nonprofit limited liability company or foreign nonprofit limited liability company and the state or country under the laws of which it is organized.
 - b. The address of the registered office of the nonprofit limited liability company or foreign nonprofit limited liability company in this state, the name of its registered agent in this state at that address, and the address of its principal executive office.
 - c. A brief statement of the character of the activities in which the nonprofit limited liability company or foreign nonprofit limited liability company is actually engaged in this state.

- d. The names and respective addresses of the managers and governors of the nonprofit limited liability company or foreign nonprofit limited liability company or the name or names and respective address or addresses of the managing member or members of the nonprofit limited liability company or foreign nonprofit limited liability company.
 - e. The section of the Internal Revenue Code by which its tax status is established.
2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in section 10-33-01 or in the articles or bylaws, or in a resolution approved by the affirmative vote of the required proportion or number of the governors or members entitled to vote. If the nonprofit limited liability company or foreign nonprofit limited liability company is in the hands of a receiver or trustee, it must be signed on behalf of the nonprofit limited liability company or foreign nonprofit limited liability company by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.
3. The annual report must be delivered to the secretary of state before February second of each year, except that the first annual report must be delivered before February second of the year following the calendar year in which the certificate of organization or certificate of authority was issued by the secretary of state.
 - a. An annual report in a sealed envelope postmarked by the United States postal service before February second, or an annual report in a sealed packet with a verified shipment date by any other carrier service before February second, complies with this requirement. When the filing date falls on a Saturday or holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day complies with this requirement.
 - b. The secretary of state must file the report if the report conforms to the requirements of subsection 2.
 - (1) If the report does not conform, it must be returned to the nonprofit limited liability company or foreign nonprofit limited liability company for any necessary corrections.
 - (2) If the report is filed before the deadlines provided in this subsection, penalties for the failure to file a report within the time provided do not apply, if the report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.
4. After the date established under subsection 3, the secretary of state shall notify any nonprofit limited liability company or foreign nonprofit limited liability company failing to file its annual report that its certificate of organization or certificate of authority is not in good standing and that it may be dissolved or revoked pursuant to subsections 5 and 6. The secretary of state must mail the notice to the last registered agent at the last registered office. If the nonprofit limited liability company or foreign nonprofit limited liability company files its annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as provided in section 10-36-08, the secretary of state shall restore its certificate of organization or certificate of authority to good standing.
5. A nonprofit limited liability company that does not file its annual report, along with the statutory filing and penalty fees, within one year after the date established in subsection 3 ceases to exist and is considered involuntarily dissolved by operation of law.
 - a. Thereafter, the secretary of state shall note the termination of the nonprofit limited liability company's certificate of organization on the records of the secretary of state and shall give notice of the action to the dissolved nonprofit limited liability company.
 - b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office.

6. A foreign nonprofit limited liability company that does not file its annual report, along with the statutory filing and penalty fees, within one year after the date established by subsection 3 forfeits its authority to conduct activities in this state.
 - a. The secretary of state shall note the revocation of the foreign nonprofit limited liability company's certificate of authority on the records of the secretary of state and shall give notice of the action to the foreign nonprofit limited liability company.
 - b. Notice by the secretary of state must be mailed to the foreign nonprofit limited liability company's last registered agent at the last registered office.
 - c. The decision by the secretary of state that a certificate of authority must be revoked under this subsection is final.
7. A nonprofit limited liability company that was dissolved for failure to file an annual report, or a foreign nonprofit limited liability company whose authority was forfeited by failure to file an annual report, may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a reinstatement fee as provided in section 10-36-08. The fees must be paid and the report filed within one year following the involuntary dissolution or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the dissolution or revocation to the reinstatement.
8. The secretary of state may waive any penalties provided in this section when an annual report form could not be delivered to the nonprofit limited liability company.

10-36-08. Secretary of state - Fees and charges.

1. The secretary of state shall charge and collect for:
 - a. Filing articles of organization and issuing a certificate of organization, forty dollars.
 - b. Filing articles of amendment, twenty dollars.
 - c. Filing articles of correction, twenty dollars.
 - d. Filing restated articles of organization, thirty dollars.
 - e. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
 - f. Filing a notice of dissolution, ten dollars.
 - g. Filing articles of dissolution and termination, twenty dollars.
 - h. Filing a statement of change of address of registered office or change of registered agent, or both, the fee provided in section 10-01.1-03.
 - i. Filing an application to reserve a name, ten dollars.
 - j. Filing a notice of transfer of a reserved name, ten dollars.
 - k. Filing a cancellation of reserved name, ten dollars.
 - l. Filing a consent to use of a deceptively similar name, ten dollars.
 - m. Filing an application of a foreign nonprofit limited liability company for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, forty dollars.
 - n. Filing an application of a foreign nonprofit limited liability company for an amended certificate of authority, forty dollars.
 - o. Filing a certified statement of merger of a foreign nonprofit limited liability company holding a certificate of authority to conduct activities in this state, fifty dollars.
 - p. Filing an application for withdrawal of a foreign nonprofit limited liability company and issuing a certificate of withdrawal, twenty dollars.
 - q. Filing an annual report of a domestic or foreign nonprofit limited liability company, ten dollars.
 - (1) The secretary of state shall charge and collect additional fees for late filing of the annual report:
 - (a) After the date provided in subsection 3 of section 10-36-07, five dollars; and

- (b) After the dissolution of a nonprofit limited liability company, or the revocation of the certificate of authority of a foreign nonprofit limited liability company, the reinstatement fee of forty dollars.
- (2) Fees paid to the secretary of state according to this subdivision are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-36-07, or the annual report lacks sufficient payment as required by this subdivision.
 - r. Submitting any record for approval before the actual time of submission for filing, one-half of the fee provided in this subsection for filing the record.
 - s. Filing any other statement of a domestic or foreign nonprofit limited liability company, ten dollars.
- 2. The secretary of state shall charge and collect:
 - a. For furnishing a certified copy of any record, instrument, or paper relating to a nonprofit limited liability company, the fee provided in section 54-09-04 for copying a record and fifteen dollars for the certificate and affixing the seal to the certificate.
 - b. At the time of any service of process on the secretary of state as resident agent of a nonprofit limited liability company, twenty-five dollars, which may be recovered as taxable costs by the party to the claim for relief causing the service to be made if that party prevails in the suit or action.

10-36-09. Secretary of state - Enforcement - Appeal - Penalty.

- 1. The secretary of state may administer this chapter.
- 2. The secretary of state may propound to any nonprofit limited liability company or foreign nonprofit limited liability company that is subject to this chapter and to any officer, director, or employee thereof any interrogatory as may be reasonably necessary and proper to ascertain whether the nonprofit limited liability company has complied with this chapter applicable to the nonprofit limited liability company.
 - a. The interrogatory must be answered within thirty days after mailing or within any additional time as must be fixed by the secretary of state. The answers to the interrogatory must be full and complete and must be made in writing and under oath.
 - b. If the interrogatory is directed:
 - (1) To an individual, it must be answered by that individual; or
 - (2) To a nonprofit limited liability company, it must be answered by the president, vice president, secretary, or assistant secretary of the nonprofit limited liability company.
 - c. The secretary of state need not file any record to which the interrogatory relates until the interrogatory has been answered, and not then if the answers disclose that the record is not in conformity with this chapter.
 - d. The secretary of state shall certify to the attorney general, for action the attorney general may deem appropriate, an interrogatory and answers thereto, which discloses a violation of this chapter.
 - e. Each governor, manager, or employee of a nonprofit limited liability company or foreign nonprofit limited liability company who fails or refuses within the time provided by subdivision a to answer truthfully and fully an interrogatory propounded to that person by the secretary of state is guilty of an infraction.
 - f. An interrogatory propounded by the secretary of state and the answers are not open to public inspection. The secretary of state may not disclose any facts or information obtained from the interrogatory or answers except insofar as may be permitted by law or insofar as is required for evidence in any criminal proceedings or other action by this state.
- 3. If the secretary of state rejects any record required by this chapter to be approved by the secretary of state before the record may be filed, then the secretary of state shall give written notice of the rejection to the person that delivered the record, specifying the reasons for rejection.

- a. Within thirty days after the service of the notice of denial, the nonprofit limited liability company or foreign nonprofit limited liability company, as the case may be, may appeal to the district court in the judicial district serving Burleigh County by filing with the clerk of the court a petition setting forth a copy of the record sought to be filed and a copy of the written rejection of the record by the secretary of state.
 - b. The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take the action the court determines proper.
4. If the secretary of state dissolves a nonprofit limited liability company or revokes the certificate of authority to conduct activities in this state of any foreign nonprofit limited liability company, pursuant to section 10-36-07, the nonprofit limited liability company or foreign nonprofit limited liability company may appeal to the district court in the judicial district serving Burleigh County by filing with the clerk of the court a petition, including:
 - a. A copy of the nonprofit limited liability company's articles of organization and a copy of the notice of dissolution given by the secretary of state; or
 - b. A copy of the foreign nonprofit limited liability company's certificate of authority to conduct activities in this state and a copy of the notice of revocation given by the secretary of state. The matter must be tried de novo by the court. The court shall sustain the action of the secretary of state or shall direct the secretary of state to take the action the court determines proper.
5. If the court order sought is one for reinstatement of a nonprofit limited liability company that has been dissolved as provided in subsection 5 of section 10-36-07, or for reinstatement of the certificate of authority of a foreign nonprofit limited liability company that has been revoked as provided in subsection 6 of section 10-36-07, then together with any other actions the court deems proper, any such order which reverses the decision of the secretary of state shall require the nonprofit limited liability company or foreign nonprofit limited liability company to:
 - a. File the most recent past-due annual report;
 - b. Pay the fees to the secretary of state for all past-due annual reports as provided in subdivision q of subsection 1 of section 10-36-08; and
 - c. Pay the reinstatement fee to the secretary of state as provided in subdivision q of subsection 1 of section 10-36-08.