

POLICY ON FILING DOCUMENTS

Section 131(1) of the Business Corporation Act and the Nonprofit Corporation Act, Section 206(1) of the Uniform Limited Partnership Act and Section 104(2) of the Limited Liability Company Act provide, in part, that the administrator shall file documents that substantially conform to the requirements of the act. In addition, section 221 of the Business Corporation Act and the Nonprofit Corporation Act provides that filing is conclusive evidence that “all conditions precedent required to be performed under this act have been fulfilled” and that the corporation has been formed or organized under the act. Documents that meet the mandatory requirements of the act, i.e., name availability, proper execution, and proper fee may be filed if reasonable objectives of the statute are met without strict compliance with statutory requirements.

The Corporation Division may file documents that are in substantial conformance, but contain deviations which do not affect the formation of a corporation, limited partnership or limited liability company. Staff will notify the submitter when a document is filed under this policy and advise the submitter that they may file a Certificate of Correction or a Certificate of Amendment if they wish to make appropriate changes to the document. Staff may also contact the submitter to receive permission to correct documents before they are filed.

Acceptable deviations include, but are not limited to, the following:

Deviation

- Incorrect form, title or number.
- No punctuation in required word.
- Resident Agent or Registered office shown on the document is different than our records.
- Street address and mailing address of registered office or resident agent not in the same city or zip code.
- The names and addresses of the incorporators or partners are not included in the articles or certificate.
- No common stock.
- Preferred stock denoted without common stock.

Policy

Document with proper content and fee, but wrong title or form number will be filed.

Staff will contact the submitter, add the required punctuation or file the document without punctuation.

Staff will contact the submitter, correct the agent or address, or file the document without a change when agent and registered office are not required by the act to be on the form.

The document will be filed.

Articles and certificates will be filed that contain the minimum number required by the act.

For example: The Business Corporation Act requires the name, address and signature of at least one incorporator. At least one person whose name and address is listed as an incorporator must sign the document.

If Articles of Incorporation for a profit corporation contain no stock, staff will contact the submitter and may add common stock as directed by submitter.

The document will be filed.

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Deviation

- Both common and preferred stock are denoted, but no preference is shown for preferred stock.
- Failure to describe real and personal property and method of financing on the initial Articles of Incorporation.
- Artfully drafted provisions for indemnification.
- Amendment fails to state complete article.
- Corporation is dissolved.
- Effective date in document predates filing date.
- Signature is not the original.
- Capacity of person signing.
- Certificate of good standing from home state is not the original.
- Approval from other agency not submitted with the document.

Policy

The document will be filed.

If there is no real and personal property, a blank is acceptable

Provisions are acceptable when the provision states it is effective to the extent permitted by law.

The amendment is acceptable when the article or portion of article being amended reasonably can be identified.

Resignation of agent, changes of resident agent or registered office or a Certificate of Correction may be filed.

Wording will be added to endorsement to clarify the document is effective on the date endorsed "filed" by the Bureau unless a subsequent date within 90 days after delivery is stated in the document.

Require authorized signature. Accept electronic signatures.

Sufficient for profit corporation to state "authorized officer or agent" beneath an opposite signature.

Copy of Certificate of Good Standing may be accepted.

File document when no mandatory requirement exists unless the Bureau has agreement with other agency to obtain such approval prior to filing.

Any questions as to whether this policy will apply in a particular situation should be addressed to the Division Director.

This policy statement shall be adopted immediately and remain in effect unless rescinded or modified by the Bureau Director.

Approved by Julie Croll, Director
Corporation, Securities and Land Development Bureau
April 8, 1998