

REVIEW PROCEDURES FOR C&S 518 - CERTIFICATE OF CORRECTION

Act 284, P.A. 1972; MCLA 450.1133; MSA 21.200(133)
Act 162, P.A. 1982; MCLA 450.2133; MSA 21.197(133)
Act 23, P.A. 1993; MCLA 450.4106; MSA 21.198(4106)

Section 133 of Act 284, P.A. 1972 (profit corporations), section 133 of Act 162, P.A. 1982 (nonprofit corporations), and section 106 of Act 23, P.A. 1993 (limited liability companies) provide a means to correct an error in a previously filed document. Act 213, P.A. 1982 (limited partnerships) does not contain a similar provision. Consequently, errors in documents filed for domestic limited partnerships can be corrected only by filing a certificate of amendment (C&S 403) or restated certificate of limited partnership (C&S 402) with a foreign limited partnership filing a certificate of change (C&S 412).

Each of the above acts prescribes the information to be contained in the certificate of correction. Form C&S 518 may be used for this purpose.

The document must be reviewed to determine that it substantially complies with the act. For example, provisions must conform to law and be consistent with attorney general opinions, guidelines, and policies; the name, if it is being corrected, must be available for use; signatures must be affixed; fees must be paid; etc.

Following are specific items to be considered in determining whether or not the certificate can be filed.

SPECIFIC DOCUMENT ITEMS	STATUTORY CITE
<p>Except for the name, the document on behalf of a corporation must be in the English language. The corporate name need not be English words, but must be written in English letters or Arabic or Roman numerals.</p>	<p>BCA 132(1) NPA 123(1)</p>
<p>The Michigan Limited Liability Company Act does not contain a similar provision requiring the document to be drafted in the English language.</p>	
<p style="text-align: center;"><u>ITEM 1</u></p>	
<p>Must be completed with the name of the corporation or limited liability company. The name must be identical (spelling, abbreviations, and punctuation) to the name as it appears on the database.</p>	<p>BCA 133 NPA 133 LLCA 106(3)</p>
<p style="text-align: center;"><u>ITEM 2</u></p>	
<p>Must be completed with the identification number for the name in Item 1.</p>	
<p style="text-align: center;"><u>ITEM 3</u></p>	
<p>Must be completed to reflect the state of incorporation or organization.</p>	
<p style="text-align: center;"><u>ITEM 4</u></p>	
<p>Must be completed with the title of the document being corrected and the date it was filed by the Bureau.</p>	<p>BCA 133 NPA 133 LLCA 106(3)</p>
<p style="text-align: center;"><u>ITEM 5</u></p>	
<p>Must be completed with a brief description of the error.</p>	<p>BCA 133 NPA 133 LLCA 106(3)</p>

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<p data-bbox="630 300 716 327" style="text-align: center;"><u>ITEM 6</u></p> <p data-bbox="220 365 1118 455">Must reflect the provision being corrected as it should have been stated originally. If a signature is being corrected, the signature clause must appear followed by the correct signature.</p> <p data-bbox="561 491 781 518" style="text-align: center;"><u>EFFECTIVE DATE</u></p> <p data-bbox="220 556 1133 678">The document is effective as of the filing date (or later effective date if any) contained in the document being corrected. The document is not effective to a person who relied upon the inaccurate portion as being correct and was adversely affected by the correction.</p> <p data-bbox="220 714 1122 774">The "For Bureau Use Only" box must be completed by the examiner to include the effective date. This date must agree with that stated in Item 4.</p> <p data-bbox="594 810 748 837" style="text-align: center;"><u>SIGNATURE</u></p> <p data-bbox="220 873 451 900">Profit Corporations:</p> <ol data-bbox="220 936 1118 1283" style="list-style-type: none">1) A certificate correcting articles of incorporation must be signed by the incorporators.2) A certificate correcting a document signed prior to 10/24/97 by the president, vice-president, chairperson or vice-chairperson must be signed by a person holding one of those offices, or their attorneys in fact. A certificate correcting a document signed after 10/24/97 can be signed by an authorized officer or agent.3) Any certificate filed on behalf of a profit corporation must be signed in the same manner as the document being corrected. <p data-bbox="220 1318 792 1346">Nonprofit and Professional Service Corporations:</p> <ol data-bbox="220 1381 1143 1692" style="list-style-type: none">1) A certificate correcting articles of incorporation must be signed by the incorporators.2) A certificate correcting a document required to be signed by the president, vice-president, chairperson or vice-chairperson must be signed by a person holding one of those offices, or their attorneys-in-fact.3) Any certificate filed on behalf of a nonprofit or professional service corporation must be signed in the same manner as the document being corrected. <p data-bbox="220 1728 548 1755">Limited Liability Companies:</p> <ol data-bbox="220 1791 1118 1948" style="list-style-type: none">1) A certificate correcting articles of organization must be signed by at least one member.2) Any certificate filed on behalf of a limited liability company must be signed in the same manner as the document being corrected.	<p data-bbox="1195 365 1344 455">BCA 133 NPA 133 LLCA 106(3)</p> <p data-bbox="1195 556 1344 646">BCA 133 NPA 133 LLCA 106(4)</p> <p data-bbox="1195 873 1300 900">BCA 133</p> <p data-bbox="1195 1318 1300 1346">NPA 133</p> <p data-bbox="1195 1728 1344 1755">LLCA 106(2)</p>

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<p>If incorporators are corrected, Item 6 must set out that Article from the articles of incorporation which names incorporators. It must reflect the names and addresses of the persons who should have been named originally. It must also reflect a correction to the signature clause and the signatures of the incorporators as corrected. Signatures of the persons named in the articles of incorporation must be affixed in the signature area at the bottom of the certificate. Signatures for nonprofit and professional service corporations must be in ink.</p> <p>Certificates correcting articles must be signed by the same persons who signed the articles originally unless the certificate corrects nonprofit articles which contained a written instrument designating one of the incorporators to sign on behalf of all of them. The signature of that one person only is required in those cases. Documents required to be signed by one or more specific officers, such as chairperson, vice-chairperson of the board of directors, president, vice-president, secretary or assistant secretary in the case of corporations, member or manager in the case of limited liability companies, must be signed by a person holding one of those offices or positions but need not be the same person who signed originally. Documents required to be signed by an authorized officer or agent if a corporation, member or manager if a limited liability company must be signed by any authorized officer or agent, member or manager but need not be signed by the same person who signed originally.</p> <p>If the signatures on the document being corrected were required to be notarized, the signatures on the Certificate of Correction must also be notarized.</p> <p style="text-align: center;"><u>FEES</u></p> <p>Filing fee - Corporations: \$10.00 (Nonrefundable for profit corporations)</p> <p style="padding-left: 40px;">Limited Liability Companies: \$25.00 (Nonrefundable)</p> <p>Organization fee - profit corporations only which correct the number of authorized shares or authorized shares attributable to Michigan. Give credit for any organization fee paid at the time the document being corrected was filed.</p> <p>ARTICLES: Authorized shares corrected to 60,000 or fewer: \$0.00</p> <p>Authorized shares corrected to more than 60,000 but less than 10,000,001: additional organization fee is payable on the number of shares over 60,000 at the rate of \$30.00 for each 20,000 shares or portion thereof up to a maximum of \$5,000.</p>	<p>BCA 1060(1)(n) & 1060(2) NPA 1060(1)(n) Policy Statement C-9 Policy Statement C-5 Policy Statement C-33</p> <p>LLCA 1101(1)(a) & 1101(2)</p> <p>BCA 1062(3) Policy Statement C-9 Policy Statement C-5</p>

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<p>Authorized shares exceeding 10,000,000: the additional organization fee is \$5,000 plus \$30.00 for each 20,000 shares or portion thereof in excess of 10,000,000 up to a maximum of \$200,000 total.</p> <p>RESTATED ARTICLES AND AMENDMENTS: Authorized shares corrected to a greater number: \$30.00 for each additional 20,000 shares or portion thereof up to a maximum of \$5,000 for the increase in authorized shares of 10,000,000 or fewer.</p> <p>Authorized shares exceeding 10,000,000: \$5,000 plus \$30.00 for each 20,000 shares or portion thereof in excess of 10,000,000 up to a maximum of \$200,000 total.</p> <p>APPLICATION FOR CERTIFICATE OF AUTHORITY: \$0.00</p> <p>AMENDED APPLICATION FOR CERTIFICATE OF AUTHORITY: Authorized shares are corrected to a greater number: \$30.00 for each additional 20,000 shares or portion thereof attributable to Michigan up to a maximum of \$5,000 if the shares attributable to Michigan are 10,000,000 or fewer.</p> <p>Shares attributable to Michigan exceed 10,000,000: \$5,000 plus \$30.00 for each additional 20,000 shares or portion thereof attributable up to a maximum of \$200,000 total.</p> <p style="text-align: center;"><u>MISCELLANEOUS</u></p> <p>1. Examples of errors which can be corrected by filing a certificate of correction are:</p> <ul style="list-style-type: none"> a) the corporation or limited liability company name b) an effective date. One may be changed, added or omitted c) incorporators which were erroneously named or omitted d) signatures e) the addition of an omitted provision f) the removal of a provision which should not have been included g) a document filed for the wrong corporation or limited liability company <p>Except for errors in a certificate changing the resident agent or registered office (form 520R), errors in annual reports are corrected by filing an amended annual report instead of a certificate of correction.</p> <p>If an error occurred in a change in resident agent or registered office filed in an annual report as a 520R, the certificate of correction should identify the document being corrected as a certificate of change of registered office and/or resident agent instead of an annual report.</p>	<p>BCA 1062(3) Policy Statement C-9 Policy Statement C-5</p> <p>BCA 1062(4) Policy Statement C-9 Policy Statement C-5</p>

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<p>2. Filing of certificate of correction was first permitted January 1, 1973 when Act 284, P.A. 1972 become effective. Prior to Act 32, P.A. 1978, effective February 24, 1978, a certificate of correction was limited to correcting a default in the execution or an informality or error appearing on the face of the document. For example, a corporate name, incorporators, etc. could not be changed. The error or defect had to be apparent.</p> <p>Section 133 as amended by Act 32, P.A. 1978 permits the filing of a certificate of correction without limitation. In a conversation with Marc Goldman, Assistant Attorney General, on May 15, 1978, and again on August 17, 1978, Polly Guy was advised that it appears it is the intent of the statute to permit a corporation to make any corrections whatsoever so long as it was intended in the first instance.</p> <p>3. Artfully drafted provisions which relate to the operation of a profit corporation but not its formation will be permitted when accompanied by letter from legal counsel which clearly states an opinion that the provision is permissible under the act.</p> <p>4. An administrative error, an examiner's oversight of a statutory requirement resulting in a defect in a filed document, may be corrected by filing of a certificate of correction.</p>	<p>Policy Statement C-1</p> <p>Policy Statement C-13</p>