

1 SENATE BILL 162

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Clemente Sanchez

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10 AN ACT

11 RELATING TO BUSINESS ENTITIES; REQUIRING THAT CERTAIN BUSINESS
12 ENTITIES CONFIRM THAT THE ENTITY HAS RESIGNED AS A REGISTERED
13 AGENT OR IS NOT CURRENTLY A REGISTERED AGENT FOR ANY ENTITY
14 REGISTERED IN NEW MEXICO IN ORDER TO BE ELIGIBLE FOR
15 DISSOLUTION, WITHDRAWAL OR CANCELLATION OF REGISTRATION.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 53-8-51 NMSA 1978 (being Laws 1975,
19 Chapter 217, Section 51, as amended) is amended to read:

20 "53-8-51. ARTICLES OF DISSOLUTION.--If voluntary
21 dissolution proceedings have not been revoked, then when all
22 debts, liabilities and obligations of the corporation are paid
23 and discharged, or adequate provision has been made therefor,
24 and all of the remaining property and assets of the corporation
25 are transferred, conveyed or distributed in accordance with the

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1 provisions of the Nonprofit Corporation Act, articles of
2 dissolution shall be executed by the corporation by two
3 authorized officers of the corporation, which statement shall
4 set forth:

5 A. the name of the corporation;

6 B. if there are members entitled to vote thereon:

7 (1) a statement setting forth the date of the
8 meeting of members at which the resolution to dissolve was
9 adopted, that a quorum was present at the meeting and that the
10 resolution received at least two-thirds of the votes that
11 members present at the meeting or represented by proxy were
12 entitled to cast; or

13 (2) a statement that the resolution was
14 adopted by a consent in writing signed by all members entitled
15 to vote with respect thereto;

16 C. if there are no members, or no members entitled
17 to vote thereon, a statement of such fact, the date of the
18 meeting of the board of directors at which the resolution to
19 dissolve was adopted and a statement of the fact that the
20 resolution received the vote of a majority of the directors in
21 office;

22 D. that all debts, obligations and liabilities of
23 the corporation have been paid and discharged or that adequate
24 provision has been made therefor;

25 E. a copy of the plan of distribution, if any, as

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1 adopted by the corporation or a statement that no plan was so
2 adopted;

3 F. that all the remaining property and assets of
4 the corporation have been transferred, conveyed or distributed
5 in accordance with the provisions of the Nonprofit Corporation
6 Act; ~~and~~

7 G. that there are no suits pending against the
8 corporation in any court or that adequate provision has been
9 made for the satisfaction of any judgment, order or decree that
10 may be entered against it in any pending suit; and

11 H. confirmation that the corporation has resigned
12 as a registered agent or is not currently a registered agent
13 for any entity registered in New Mexico."

14 SECTION 2. Section 53-8-77 NMSA 1978 (being Laws 1975,
15 Chapter 217, Section 77, as amended) is amended to read:

16 "53-8-77. WITHDRAWAL OF FOREIGN CORPORATION.--

17 A. A foreign corporation authorized to conduct
18 affairs in New Mexico may withdraw from this state upon
19 procuring from the ~~[commission]~~ secretary of state a
20 certificate of withdrawal. In order to procure the certificate
21 of withdrawal, the foreign corporation shall deliver to the
22 ~~[commission]~~ secretary of state an application for withdrawal,
23 which shall set forth:

24 (1) the name of the corporation and the state
25 or country under the laws of which it is incorporated;

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1 (2) that the corporation is not conducting
2 affairs in New Mexico;

3 (3) that the corporation surrenders its
4 authority to conduct affairs in New Mexico;

5 (4) that the corporation revokes the authority
6 of its registered agent in New Mexico to accept service of
7 process and consents that service of process in any action,
8 suit or proceeding based upon any cause of action arising in
9 this state during the time the corporation was authorized to
10 conduct affairs in this state may thereafter be made on the
11 corporation by service thereof on the secretary of state; ~~and~~

12 (5) a post office address to which the
13 ~~[commission]~~ secretary of state may mail a copy of any process
14 against the corporation that may be served on it; and

15 (6) confirmation that the corporation has
16 resigned as a registered agent or is not currently a registered
17 agent for any entity registered in New Mexico.

18 B. The application for withdrawal shall be made on
19 forms prescribed and furnished by the ~~[commission]~~ secretary of
20 state and shall be executed by the corporation by two
21 authorized officers of the corporation or, if the corporation
22 is in the hands of a receiver or trustee, shall be executed on
23 behalf of the corporation by the receiver or trustee."

24 SECTION 3. Section 53-16-11 NMSA 1978 (being Laws 1967,
25 Chapter 81, Section 89, as amended) is amended to read:

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1 "53-16-11. ARTICLES OF DISSOLUTION.--If voluntary
2 dissolution proceedings have not been revoked, then, when all
3 debts, liabilities and obligations of the corporation have been
4 paid and discharged or adequate provision has been made
5 therefor and all of the remaining property and assets of the
6 corporation have been distributed to its shareholders, articles
7 of dissolution shall be executed by the corporation by an
8 authorized officer, which statement shall set forth:

9 A. the name of the corporation;

10 B. that the [~~commission~~] secretary of state has
11 previously filed a statement of intent to dissolve the
12 corporation and the date on which the statement was filed;

13 C. that all debts, obligations and liabilities of
14 the corporation have been paid and discharged or that adequate
15 provision has been made therefor;

16 D. that all the remaining property and assets of
17 the corporation have been distributed among its shareholders in
18 accordance with their respective rights and interests; [~~and~~]

19 E. that there are no suits pending against the
20 corporation in any court or that adequate provision has been
21 made for the satisfaction of any judgment, order or decree
22 that may be entered against it in any pending suit; and

23 F. confirmation that the corporation has resigned
24 as a registered agent or is not currently a registered agent
25 for any entity registered in New Mexico."

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1 SECTION 4. Section 53-17-15 NMSA 1978 (being Laws 1967,
2 Chapter 81, Section 116, as amended) is amended to read:

3 "53-17-15. WITHDRAWAL OF FOREIGN CORPORATION.--

4 A. A foreign corporation authorized to transact
5 business in this state may withdraw from this state upon
6 procuring from the [~~commission~~] secretary of state a
7 certificate of withdrawal. In order to procure the certificate
8 of withdrawal, the foreign corporation shall deliver to the
9 [~~commission~~] secretary of state an application for withdrawal,
10 which shall set forth:

11 (1) the name of the corporation and the state
12 or country under the laws of which it is incorporated;

13 (2) a statement that the corporation is not
14 transacting business in this state;

15 (3) a statement that the corporation
16 surrenders its authority to transact business in this state;

17 (4) a statement that the corporation revokes
18 the authority of its registered agent in this state to accept
19 service of process and consents that service of process in an
20 action, suit or proceeding based upon a cause of action arising
21 in this state during the time the corporation was authorized to
22 transact business in this state may thereafter be made on the
23 corporation by service thereof on the secretary of state;

24 (5) an address to which the secretary of state
25 may mail a copy of a process against the corporation that may

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1 be served on it;

2 (6) a statement of the aggregate number of
3 shares that the corporation has authority to issue, itemized by
4 class and by series, if any, within each class, as of the date
5 of the application;

6 (7) a statement of the aggregate number of
7 issued shares, itemized by class and by series, if any, within
8 each class, as of the date of the application; [~~and~~]

9 (8) a statement confirming that the
10 corporation has resigned as a registered agent or is not
11 currently a registered agent for any entity registered in New
12 Mexico; and

13 [~~(8)~~] (9) additional information as necessary
14 or appropriate in order to enable the [~~commission~~] secretary of
15 state to determine and assess any unpaid fees payable by the
16 foreign corporation.

17 B. The application for withdrawal shall be made on
18 forms prescribed by the [~~commission~~] secretary of state or on
19 forms containing substantially the same information as forms
20 prescribed by the [~~commission~~] secretary of state and shall be
21 executed by the corporation by an authorized officer of the
22 corporation or, if the corporation is in the hands of a
23 receiver or trustee, shall be executed on behalf of the
24 corporation by the receiver or trustee."

25 SECTION 5. Section 53-19-41 NMSA 1978 (being Laws 1993,

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1 Chapter 280, Section 41) is amended to read:

2 "53-19-41. ARTICLES OF DISSOLUTION.--

3 A. On the dissolution of a limited liability
4 company, persons with authority [~~under~~] pursuant to the
5 provisions of Subsection A of Section [~~42 of the Limited~~
6 ~~Liability Company Act~~] 53-19-42 NMSA 1978 to wind up its
7 business and affairs shall sign and deliver, to the office of
8 the [~~commission~~] secretary of state for filing, articles of
9 dissolution.

10 B. The articles of dissolution shall state:
11 (1) the name of the limited liability company;
12 (2) the dates of filing the articles of
13 organization and all amendments and restatements to the
14 articles of organization;
15 (3) the event causing the dissolution;
16 (4) the effective date, which shall be a date
17 certain, of the articles of dissolution if the articles of
18 dissolution are not to be effective on filing;
19 (5) the name and address of each person who
20 has the authority to act for the limited liability company in
21 connection with the winding up of its business and affairs;
22 (6) confirmation that the limited liability
23 company has resigned as a registered agent or is not currently
24 a registered agent for any entity registered in New Mexico;
25 [~~6~~] (7) whether the winding up of the

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1 business and affairs of the limited liability company is being
2 supervised by a court pursuant to the provisions of Paragraph
3 (2) of Subsection A of Section [~~42 of the Limited Liability~~
4 ~~Company Act~~] 53-19-42 NMSA 1978; and

5 [~~(7)~~] (8) any other information persons
6 signing the articles of dissolution choose to include.

7 C. After the articles of dissolution have been
8 filed, only a person named in the articles of dissolution as
9 having authority to act for the limited liability company in
10 connection with the winding up of its business and affairs
11 shall have such authority, including the authority to bind the
12 limited liability company, transact business on its behalf, act
13 as its agent and execute any instrument for it and in its name.

14 D. Articles of dissolution that have been filed may
15 be amended at [~~anytime~~] any time and from time to time or
16 revoked at any time and, unless an amendment or revocation
17 states otherwise, it shall be effective upon delivery to the
18 office of the [~~commission~~] secretary of state for filing."

19 **SECTION 6.** Section 53-19-52 NMSA 1978 (being Laws 1993,
20 Chapter 280, Section 52) is amended to read:

21 "53-19-52. CANCELLATION OF REGISTRATION.--

22 A. A foreign limited liability company authorized
23 to transact business in New Mexico may cancel its registration
24 by application to the [~~commission~~] secretary of state for a
25 certificate of cancellation. The application for cancellation

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1 shall set forth:

2 (1) the name of the foreign limited liability
3 company and the state or other jurisdiction under the laws of
4 which it is organized;

5 (2) that the foreign limited liability company
6 is not transacting business in New Mexico;

7 (3) that the foreign limited liability company
8 surrenders its registration to transact business in New Mexico;

9 (4) that the foreign limited liability company
10 confirms the authority of its registered agent for service of
11 process in New Mexico and consents that service of process in
12 any action, suit or proceeding based upon any cause of action
13 arising in New Mexico during the time that the foreign limited
14 liability company was authorized to transact business in New
15 Mexico also may be made on [~~such~~] the foreign limited liability
16 company by service upon the secretary of state; [~~and~~]

17 (5) an address to which a person may mail a
18 copy of any process against the foreign limited liability
19 company; and

20 (6) confirmation that the foreign limited
21 liability company has resigned as a registered agent or is not
22 currently a registered agent for any entity registered in New
23 Mexico.

24 B. The application for cancellation shall be in the
25 form specified by the [~~commission~~] secretary of state and shall

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1 be executed for the foreign limited liability company by a
2 person with authority to do so under the laws of the state or
3 other jurisdiction of its organization or, if the foreign
4 limited liability company is in the hands of a receiver or
5 trustee, by ~~such~~ the receiver or trustee on behalf of the
6 foreign limited liability company.

7 C. A cancellation does not terminate the authority
8 of the secretary of state to accept service of process on the
9 foreign limited liability company with respect to causes of
10 action arising out of its having done business in New Mexico."

11 SECTION 7. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2019.