

# SOUTH DAKOTA DOMESTIC BUSINESS CORPORATIONS



COURTESY OF SOUTH DAKOTA SECRETARY OF STATE JASON M. GANT

THE PURPOSE OF THIS GUIDE IS TO ASSIST CORPORATIONS WHICH CHOOSE TO HAVE SOUTH DAKOTA BE THEIR CORPORATE HOME. THIS GUIDE IS NOT A SUBSTITUTE FOR LEGAL OR ACCOUNTING ADVICE. PHOTO COURTESY OF SD TOURISM

## Domestic Business Corporations

Corporations may be formed in South Dakota for any lawful purpose under South Dakota Codified Laws Title 47. One or more persons eighteen years or older may act as incorporators by submitting Articles of Incorporation to the Secretary of State. The incorporate does not have to be a resident of South Dakota.

Articles of Incorporation may be completed on forms available from the Secretary of State's office or another document giving the same information that is in concurrence with statute. The forms can be either typed or printed in ink to insure readability and to produce legible copies. One originally signed copy is to be submitted to the Secretary of State's office for review.

If the articles are in compliance, the original will be filed and a duplicate copy will be returned to the corporation with a Certificate of Incorporation. Upon issuance of a Certificate of Incorporation, the corporate existence begins.

### Name Availability

The Articles of Incorporation are reviewed for compliance with the law and to determine if the name is available. It must include the word "corporation," "incorporated," "company," "limited" or an abbreviation of one of these words.

A name availability check can be made by calling the Secretary of State's office. A telephone search is only a preliminary check and does not guarantee that the name will be available when the articles are submitted for filing. A corporate name may be reserved for a period of 120 days by submitting an application for reservation of name and paying the \$25 filing fee. An application for reservation of name is available from the Secretary of State's office.

Under SDCL 47-1A-401.1, a corporate name should be distinguishable upon the records of the Secretary of State from another corporate name on file. The law does provide that a similar name may be used provided one or more words are added to make the name distinguishable from the other name on file.

## Directors / Incorporators

The business of the corporation must be managed by one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws. The names and complete addresses must be listed in the Articles of Incorporation.

Directors are not required to be shareholders of the corporation unless the articles or bylaws so require. Directors are not required to be residents of South Dakota. The names and addresses of the original incorporators must also be listed in the articles.

## Registered Agent

South Dakota law requires every corporation to maintain a registered agent. The registered agent must be an individual who has a physical address in South Dakota. A commercial registered agent is also acceptable and a list of commercial registered agents can be found at the Secretary of State's website. The registered agent will be designated to receive all legal service of process for that corporation.

The corporation's place of business does not have to be in South Dakota but the law requires that the registered agent's registered office be maintained in South Dakota. A post office box number can be added for mailing but it is necessary to list the full address including street address or rural route and box number.

In the event the registered agent and/or the registered address changes, the corporation must file a Statement of Change with the Secretary of State's office and pay the required \$10 filing fee.

## Good Standing Certificate

- An active corporation that has completed all of the required filings including the Annual Report can obtain a Certificate of Good Standing or Certificate of Existence verifying that it is on file with the Secretary of State's office.

# ANNUAL REPORT

-- Every domestic business corporation must file an Annual Report during the anniversary month of incorporation. The first annual report will be due one year after your qualification month. The Secretary of State's office will mail a reminder to the registered agent's address on file prior to the filing month.

-- The Annual Report must be filed each year whether or not they corporation is actively engaged in business. The Annual Report filing is extremely important as failure to file the report allows the Secretary of State to administratively dissolve the corporation.

## Articles of Amendment / Restated Articles

If the corporation wants to make changes to the original Articles of Incorporation, such as the corporate name, the corporation's purposes or authorized stock, the board of directors may adopt a resolution describing the proposed amendment and submit it to a vote of the shareholders at an annual or special meeting.

If several sections of the original articles are to be changed, the resolution may incorporate the proposed amendment in restated articles. The amendment may be adopted upon receiving a majority vote of the shareholders entitled to vote. The articles of amendment or restated articles must be filed with the Secretary of state and accompanied with the appropriate fee.

## Dissolution

A corporation which has not commenced business and which has not issued any shares may be voluntarily dissolved by a majority of the incorporators by filing Articles of Dissolution with the Secretary of State.

If the corporation has issued shares, the board of directors may adopt a resolution to dissolve voted on by the stockholders entitled to vote. The Articles of Dissolution must be filed with the Secretary of State accompanied by the appropriate fee.

## Purpose

A corporation may be formed for any lawful purpose. A person may file an optional provision that includes a purpose clause that contains information to determine the type of business the corporation will be engaged in and to determine whether the purpose is legally acceptable.

Any corporation engaged in farming must comply with the Family Farm Act of 1974 by filing an additional qualification form available upon request from the Secretary of State's office. Forms are also found at the South Dakota Secretary of State's website at [sdsos.gov](http://sdsos.gov).

Medical, chiropractic, optometric, podiatric, dental, veterinary, physician's assistants, nursing, practice of law and public accounting corporations must contain additional provisions under professional corporation laws. Anyone filing those corporations should seek legal advice to ascertain that the necessary provisions are included in the Articles of Incorporation.

## Shares

According to SDCL 47-1A-601, the Articles of Incorporation must set forth any classes of shares and series of shares within a class, and the number of shares of each class and series, that the corporation is authorized to issue. Corporations must designate either common or preferred shares for the stocks issued.

## Information Requests / Telephone Inquiries

All corporate filings are public record and information is available by telephone inquiry or letter request. There is no fee for information. Copies may be obtained for \$1.00 per page. There is an additional \$15.00 fee if certified copies are requested.

## Filing Standards / Checklist

If filings are in proper order with the necessary information, they are usually processed the same day or next in order of which they are received. Any corporate documents may be expedited with an additional \$50.00 fee. Some common problems that delay filings are:

- ✓ Failure to sign filings
- ✓ Failure to include the proper filing fee
- ✓ Registered Agent address not properly completed.
- ✓ The corporate name isn't available for incorporation.

# Questions?



Call corporations at (605) 773-4845



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