

CHAPTER 10-31

PROFESSIONAL ORGANIZATIONS ACT

10-31-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Create" means to form an organization by:
 - a. Incorporating a professional corporation;
 - b. Organizing a professional limited liability company; or
 - c. Registering a professional limited liability partnership.
2. "Executive" means an officer or a director of a professional corporation, a manager or a governor of a professional limited liability company, or a partner of a professional limited liability partnership.
3. "Foreign limited liability partnership" has the meaning set forth in section 45-22-01.
4. "Foreign professional organization" means a professional organization that is created under laws other than the laws of this state for purposes for which a professional organization may be created under this chapter.
5. "Owner" means a shareholder of a professional corporation, a member of a professional limited liability company, or a partner of a limited liability partnership.
6. "Professional corporation" or "corporation" means a corporation that is incorporated under this chapter for the purpose of rendering professional service and which has as its shareholders only individuals who themselves are licensed or otherwise legally authorized within this state to render the same professional service as the corporation or nonlicensed employees as provided in section 10-31-07.1.
7. "Professional limited liability company" or "limited liability company" means a limited liability company that is organized under this chapter for the purpose of rendering professional service and which has as its members only individuals who themselves are licensed or otherwise legally authorized within this state to render the same professional service as the limited liability company or nonlicensed employees as provided in section 10-31-07.2.
8. "Professional limited liability partnership" or "limited liability partnership" means a limited liability partnership that is registered under this chapter for the purpose of rendering professional service, is not a foreign limited liability partnership, and has as its partners only individuals who are licensed or otherwise legally authorized within this state to render the same professional service as the limited liability partnership or nonlicensed employees as provided in section 10-31-07.1.
9. "Professional organization" or "organization" means:
 - a. A professional corporation that is incorporated under this chapter;
 - b. A professional limited liability company that is organized under this chapter; or
 - c. A professional limited liability partnership that is registered under this chapter.
10. "Professional service" means the personal service to the public which requires a license as a condition precedent to the rendering of such service and which requires as a condition of licensure an undergraduate or advanced college degree in the specific field.

10-31-02. Articles of incorporation.

1. One or more individuals may incorporate a professional organization in the form of a corporation for the practice of a profession by filing articles of incorporation with the secretary of state. The articles of incorporation must meet the requirements of chapter 10-19.1 and contain the following:
 - a. The profession to be practiced through the professional corporation; and
 - b. The names and residence addresses of all of the original shareholders of the professional corporation who will practice the profession in this state.
2. At the time the articles of incorporation are filed with the secretary of state, the professional corporation also shall file a certificate from the regulating board of the profession involved that each of the directors and shareholders of voting shares who will practice the profession in this state, if any, is licensed to practice the profession in this state.

10-31-02.1. Articles of organization.

1. One or more individuals may organize a professional organization in the form of a limited liability company for the practice of a profession by filing articles of organization with the secretary of state. The articles of organization must meet the requirements of chapter 10-32 and must contain the following:
 - a. The profession to be practiced through the professional limited liability company; and
 - b. The name and residence address of each original member of the professional limited liability company who will practice the profession in this state.
2. At the time the articles of organization are filed with the secretary of state, the professional limited liability company also shall file a certificate from the regulating board of the profession involved that each of the governors and members who will practice the profession in this state, if any, is licensed to practice the profession in this state.

10-31-02.2. Registration.

1. Two or more individuals may register a professional organization in the form of a limited liability partnership or a foreign professional organization in the form of a foreign limited liability partnership for the practice of a profession by filing the registration required under section 45-22-03 with the secretary of state. The registration must meet the requirements of chapter 45-22 and contain the following:
 - a. The profession to be practiced through the professional limited liability partnership or foreign limited liability partnership; and
 - b. The names and residence addresses of all of the partners of the professional limited liability partnership or foreign limited liability partnership who will practice the profession in this state.
2. At the time the registration is filed with the secretary of state, the professional limited liability partnership or foreign limited liability partnership also shall file a certificate from the regulating board of the profession involved that each of the partners who will practice the profession in this state is licensed to practice the profession in this state.

10-31-03. Applicability of chapter 10-19.1. Chapter 10-19.1 applies to a professional organization that is created in the form of a corporation and which enjoys the powers and privileges and is subject to the duties, restrictions, and liabilities of other corporations except when inconsistent with the letter and purpose of this chapter. This chapter takes precedence in the event of any conflict with chapter 10-19.1.

10-31-03.1. Applicability of chapter 10-32. Chapter 10-32 applies to a professional organization that is created in the form of a limited liability company and which enjoys the powers and privileges and is subject to the duties, restrictions, and liabilities of other limited liability companies except when inconsistent with the letter and purpose of this chapter. This chapter takes precedence in the event of any conflict with chapter 10-32.

10-31-03.2. Applicability of chapter 45-22. Chapter 45-22 applies to a professional organization that is created in the form of a limited liability partnership and enjoys the powers and privileges and is subject to the duties, restrictions, and liabilities of other limited liability partnerships except when inconsistent with the letter and purpose of this chapter. This chapter takes precedence in the event of any conflict with chapter 45-22.

10-31-04. Purpose for which created.

1. A professional organization may be created pursuant to this chapter only for the purpose of rendering one specific type of professional service and services ancillary thereto or for the purpose of rendering two or more kinds of professional services that are specifically authorized to be practiced in combination under the licensing laws of each of the professional services to be practiced by a licensed individual or partnership of licensed individuals and ancillary services. This subsection does not preclude an organization created pursuant to this chapter from rendering more than one specific type of professional service if the services rendered are set forth in chapters 43-03 and 43-19.1 or if the services rendered are set forth in chapters 43-26.1 and 43-40.
2. A professional organization may not engage in any business other than rendering the professional service for which it was created to render and services ancillary thereto. However, a professional organization may own real and personal property necessary or appropriate for rendering the type of professional services it was created to render and may invest its funds in real estate mortgages, stocks, bonds, membership interests, and any other type of investment.

10-31-05. Name.

1. The name of a professional organization:
 - a. In the form of a corporation incorporated under this chapter must contain:
 - (1) The word "chartered";
 - (2) The word "limited" or the abbreviation "Ltd.";
 - (3) The words "professional corporation" or either the abbreviation "P.C." or the abbreviation "PC", either of which may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state; or
 - (4) The words "professional association" or either the abbreviation "P.A." or the abbreviation "PA", either of which may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state.

- b. In the form of a limited liability company organized under this chapter must contain:
 - (1) The words "professional limited liability company" or "limited liability company";
 - (2) The abbreviations:
 - (a) "P.L.C." or "PLC", either of which may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state;
 - (b) "P.L.L.C." or "PLLC", either of which may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state; or
 - (c) "L.L.C." or "LLC", either of which may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state.
 - c. In the form of a limited liability partnership registered under this chapter shall contain:
 - (1) The words "professional limited liability partnership"; or
 - (2) The abbreviations:
 - (a) "P.L.L.P." or "PLLP", either of which may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state; or
 - (b) "L.L.P." or "LLP", either of which may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state.
2. The use of any other word, abbreviation, affix, or prefix indicating that it is a corporation, limited liability company, or limited liability partnership in the name of an organization created under this chapter, other than the words and abbreviations set forth in subsection 1, is prohibited.

10-31-06. Executives and owners.

1. No individual may be simultaneously an executive or owner of more than one professional organization.
2. A professional organization in the form of a corporation which has only one shareholder need have only one director, who must be the shareholder. That individual also shall serve as the president and treasurer of the corporation. The other officers of the corporation need not be licensed or otherwise legally authorized in the same field of endeavor as the president.
3. A retired individual may not continue as an executive or owner of a professional organization.

10-31-07. Issuance and transfer of shares. A professional organization in the form of a corporation may issue its shares only to persons who are licensed to render the same specific professional services as those for which the corporation was incorporated or as provided by section 10-31-07.1. A shareholder may voluntarily transfer shares in a professional corporation only to a person owning or eligible to own the same type of shares as the person making the

transfer. The issuance of any shares in violation of this section is void. The voluntary transfer of any shares in violation of this section is void. No share may be transferred upon the books of the professional corporation or issued by the professional corporation until there is presented to and filed with the corporation a certificate from the regulating board stating that the person to whom the transfer is to be made or the share issued is licensed to render the same specific professional services as those for which the corporation was incorporated.

10-31-07.1. Retirement plan trust - Voting and nonvoting shares. A professional corporation may establish a retirement plan trust which allows the corporation to contribute nonvoting shares for nonlicensed employees and voting shares for licensed employees.

10-31-07.2. Issuance and transfer of membership interests. A professional organization in the form of a limited liability company may issue membership interests only to persons who are licensed to render the same specific professional services as those for which the company was organized. A member may voluntarily transfer membership interests in a professional limited liability company only to a person owning or eligible to own a membership interest. The reflection of any membership interests in the required records of the professional limited liability company in violation of this section is void. The voluntary transfer of any membership interests in violation of this section is void. No membership interest may be reflected in the required records of the professional limited liability company until there is presented to and filed with the limited liability company a certificate from the regulating board stating that the person to whom the transfer is to be made or the membership interest issued is licensed to render the same specific professional services as those for which the limited liability company was organized.

10-31-07.3. Issuance and transfer of partnership interests. A professional organization in the form of a limited liability partnership may issue partnership interests only to individuals who are licensed to render the same specific professional services as those for which the partnership was registered. A partner may voluntarily transfer partnership interests in a professional limited liability partnership only to a person owning or eligible to own a partnership interest. The issuance of any partnership interests issued in violation of this section is void. The voluntary transfer of any partnership interests in violation of this section is void. No partnership interest may be transferred upon the books of the professional limited liability partnership or issued by the professional limited liability partnership until there is presented to and filed with the limited liability partnership a certificate from the regulating board stating that the person to whom the transfer is to be made or the partnership interest issued is licensed to render the same specific professional services as those for which the limited liability partnership was registered.

10-31-08. Professional services through officers, managers, employees, agents. No organization created under this chapter may render professional services except through its executives, employees, and agents who are licensed to render professional services in this state. In this section, the term "employee" does not include a clerk, secretary, bookkeeper, nurse, technician, or assistant, who is not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required in connection with the profession practiced by a particular professional organization.

10-31-09. Professional relationship preserved - Liability of owners - Professional regulation.

1. This chapter does not modify any law applicable to the relationship between a person furnishing professional service and a person receiving professional service, including liability arising out of the professional service, and including the confidential relationship between the person rendering the professional service and the person receiving the professional service, if any, and all confidential relationships previously enjoyed under the laws of this state or hereinafter enacted must remain inviolate.
2. Subject to subsection 1, nothing contained in this section renders an executive, owner, or employee of a professional organization personally liable in tort for any act in which that individual has not personally participated or in contract for any contract

which that individual executes on behalf of a professional organization within the limits of that individual's authority.

3. Nothing in this chapter restricts or limits in any manner the authority and duty of the regulating boards for the licensing of an individual rendering professional services.
4. No professional organization may do any act that is prohibited to be done by any individual licensed to practice the profession which the professional organization is created to render.

10-31-10. Legal disqualification. If any executive or owner of a professional organization becomes legally disqualified to render a professional service within this state or accepts employment or is elected to a public office that, pursuant to existing law, is a restriction or limitation upon rendering of professional service, that individual shall sever all employment with or financial interest in the professional organization. A professional organization's failure to comply or require compliance with this section is a ground for the forfeiture of its right to render professional service as a professional organization pursuant to this chapter.

10-31-11. Disposition of shares, membership interests, or partnership interests on death or disqualification.

1. With respect to a professional organization in the form of a corporation:
 - a. The articles of incorporation may provide for the purchase or redemption of the shares of any shareholder upon the death or disqualification of the shareholder, or the same may be provided for in the bylaws or by private agreement. In the absence of a provision for the same in the articles of incorporation or the bylaws or by private agreement, the corporation has an option to purchase the shares of a deceased shareholder or a shareholder no longer qualified to own shares in such corporation within six months after the death or disqualification of the shareholder.
 - b. The option price for the shares must be the book value as of the end of the month immediately preceding the death or disqualification of the shareholder unless otherwise specified in the articles of incorporation, bylaws, or by private agreement. Book value must be determined from the books and records of the professional corporation in accordance with the regular method of accounting used by the corporation.
 - c. If the corporation fails to exercise the option, the shares of the deceased or disqualified shareholder may be sold to any individual licensed or otherwise legally authorized to render the same professional service as that for which the corporation was incorporated.
 - d. A disqualified shareholder, or the estate of a deceased shareholder, may continue to hold shares of the corporation during said option period and for a reasonable period thereafter, pending transfer to another licensed or otherwise legally authorized individual, but may not participate in any decisions concerning the performance of professional service.
2. With respect to a professional organization in the form of a limited liability company:
 - a. The articles of organization may provide for the purchase or redemption of the membership interest of any member upon the death or disqualification of the member, or the same may be provided for in the bylaws, in the member-control agreement, or by private agreement. In the absence of a provision for the same in the articles of organization, in the bylaws, in the member-control agreement, or by private agreement, the limited liability company has an option to purchase the membership interest of a deceased member or a member no

longer qualified to own a membership interest in the limited liability company within six months after the death or disqualification of the member.

- b. The option price for such membership interest must be the book value as of the end of the month immediately preceding the death or disqualification of the member unless otherwise specified in the articles of organization, in the bylaws, in the member-control agreement, or by private agreement. Book value must be determined from the books and records of the limited liability company in accordance with the regular method of accounting used by the limited liability company.
 - c. If the limited liability company fails to exercise the option, the membership interest of the deceased or disqualified member may be sold to any individual licensed or otherwise legally authorized to render the same professional service as that for which the limited liability company was organized.
 - d. A disqualified member, or the estate of a deceased member, may continue to hold a membership interest in the limited liability company during the option period and for a reasonable period thereafter, pending transfer to another licensed or otherwise legally authorized individual, but may not participate in any decisions concerning the performance of professional service.
3. With respect to a professional organization in the form of a limited liability partnership:
- a. The partnership agreement may provide for the purchase or redemption of the partnership interest of any partner upon the death or disqualification of the partner, or the same may be provided for by private agreement. In the absence of a provision for the same in the partnership agreement or by private agreement, the limited liability partnership has an option to purchase the partnership interest of a deceased partner or a partner no longer qualified to own a partnership interest in the limited liability partnership within six months after the death or disqualification of the partner.
 - b. The option price for the partnership interest must be the book value as of the end of the month immediately preceding the death or disqualification of the partner unless otherwise specified in the partnership agreement or by private agreement. Book value must be determined from the books and records of the limited liability partnership in accordance with the regular method of accounting used by the limited liability partnership.
 - c. If the limited liability partnership fails to exercise the option, the partnership interest of the deceased or disqualified partner may be sold to any individual licensed or otherwise legally authorized to render the same professional service as that for which the limited liability partnership was registered.
 - d. The disqualified partner, or the estate of a deceased partner, may continue to hold a partnership interest in the limited liability partnership during the option period and for a reasonable period thereafter, pending transfer to another licensed or otherwise legally authorized individual, but may not participate in any decisions concerning the performance of professional service.

10-31-12. Death of last or only shareholder - Amendment of articles of incorporation - Involuntary dissolution.

1. In the event of the death of the last or only shareholder of a professional corporation whose shares pass to heirs by intestate succession, to devisees under a last will and testament, or otherwise pass by operation of law to an individual not legally qualified to render the professional services which the professional corporation was

incorporated to perform, the heirs, devisees, or personal representative of the deceased shareholder, within six months after the date of death of the last or only shareholder, may amend the articles of incorporation to provide that the corporation must continue as a corporation under chapter 10-19.1.

2. The death of the last or only shareholder of a professional corporation and the failure of the heirs, devisees, or personal representative to make an amendment within six months after the death is a ground for the involuntary dissolution of the professional corporation.
3. When notified of the facts, the secretary of state shall certify immediately the facts to the attorney general who shall take immediate appropriate action to dissolve the professional corporation.

10-31-13. Professional organizations - Annual reports - Renewal.

1. With respect to a professional organization in the form of a corporation:
 - a. Each corporation incorporated under this chapter shall file with the secretary of state an annual report at the time specified for the filing of the report by chapter 10-19.1 giving the name and residence address of each officer, director, and shareholder of the corporation at the time of filing of the report. With respect to shares, the report must include:
 - (1) A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class; and
 - (2) A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
 - b. The report must include a statement that all directors and shareholders of voting shares who practice in this state are licensed to render the same specific professional services as those for which the corporation was incorporated. The report must be:
 - (1) Made on a form as prescribed and furnished by the secretary of state;
 - (2) Signed by the president or vice president of the corporation; and
 - (3) Accompanied by the filing fee prescribed in chapter 10-19.1.
 - c. A copy of the report must be filed at the same time with the regulatory board that licenses the shareholders described in the report. No filing fee may be charged by the regulatory board.
 - d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulating board.
2. With respect to a professional organization in the form of a limited liability company:
 - a. Each limited liability company organized under this chapter shall file with the secretary of state an annual report at the time specified for the filing of the report by chapter 10-32 giving the name and residence address of all

managers, governors, and members of the organization at the time of filing of the annual report.

- b. The report must include a statement that all governors and members holding voting membership interests who practice in this state are licensed to render the same specific professional services as those for which the limited liability company was organized. This report must be:
 - (1) Made on a form as prescribed and furnished by the secretary of state;
 - (2) Signed by the president or vice president of the limited liability company; and
 - (3) Accompanied by the filing fee prescribed in section 10-32-180.
 - c. A copy of the report must be filed at the same time with the regulatory board that licenses the members described in the report. No filing fee may be charged by the regulatory board.
 - d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulatory board.
3. With respect to a professional organization in the form of a limited liability partnership:
- a. The annual report filed with the secretary of state at the time specified for the filing of the report by chapter 45-22 must include the name and residence address of each partner of the organization at the time of filing of the annual report.
 - b. The annual report must include a statement that each partner holding voting partnership interests who practices in this state is licensed to render the same specific professional services as those for which the limited liability partnership was registered. The annual report must be:
 - (1) Made on a form prescribed and furnished by the secretary of state;
 - (2) Signed by a managing partner of the limited liability partnership; and
 - (3) Accompanied by the filing fee prescribed in section 45-22-22.
 - c. A copy of the annual report must be filed at the same time with the regulatory board that licenses the partners described in the annual report. A filing fee may not be charged by the regulatory board.
 - d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not exceeding twenty dollars per individual certified to be licensed by the regulating board.

10-31-13.1. Foreign professional organizations - Practice in the state.

1. A foreign professional organization may practice a profession in this state only through executives, owners, employees, and agents who are licensed to practice the profession in this state. The practice of a profession in this state by a foreign

professional organization is subject to the laws and regulations of this state governing the practice of such professional service.

2. The certificate of authority of a foreign professional organization may be revoked by the secretary of state as provided in this chapter, if the foreign professional organization fails to comply with this chapter.
3. This chapter does not prohibit the practice of a profession in this state by an individual who is an executive, owner, employee, or agent of a foreign professional organization, if the individual could lawfully practice the profession in this state in the absence of any relationship to a foreign professional organization.
4. This section applies regardless of whether the foreign professional organization is authorized to practice a profession in this state.
5. A foreign professional organization may render only one specific type of professional service and services ancillary thereto in this state. A foreign professional organization may not engage in any business in this state other than rendering the professional service it is authorized to render and services ancillary thereto.
6.
 - a. The provisions of chapter 10-19.1, applicable to foreign corporations, apply to a foreign professional organization rendering professional services in this state in the form of a foreign corporation. Such a foreign professional organization enjoys the powers and privileges and is subject to the duties, restrictions, and liabilities of other foreign corporations doing business in this state, except when inconsistent with the letter and purpose of the provisions of this chapter applicable to foreign professional organizations.
 - b. A foreign professional organization rendering professional services in this state in the form of a foreign corporation shall include in its application for a certificate of authority under section 10-19.1-135 or its annual report under section 10-19.1-146 the following information:
 - (1) The profession to be practiced by the foreign corporation;
 - (2) The names and residence addresses of all directors and shareholders of the corporation who practice the profession in this state; and
 - (3) In an application for a certificate of authority, a certificate from the regulating board of the profession involved that all directors and shareholders who practice the profession in this state are licensed in this state to render the same professional service as those for which the corporation was formed; and in an annual report, a statement that all directors and shareholders who practice the profession in this state are licensed in this state to render the same professional service as those for which the corporation was formed.
7.
 - a. The provisions of chapter 10-32 applicable to foreign limited liability companies apply to a foreign professional organization rendering professional services in this state in the form of a foreign limited liability company. Such a foreign professional organization enjoys the powers and privileges and is subject to the duties, restrictions, and liabilities of other foreign limited liability companies doing business in this state, except when inconsistent with the letter and purpose of the provisions of this chapter applicable to foreign professional organizations.
 - b. A foreign professional organization rendering professional services in this state in the form of a foreign limited liability company shall include in its application

for a certificate of authority under section 10-32-138 or its annual report under section 10-32-149 the following information:

- (1) The profession to be practiced by the foreign limited liability company;
 - (2) The names and residence addresses of all members or managers of the limited liability company who practice the profession in this state; and
 - (3) In an application for a certificate of authority, a certificate from the regulating board of the profession involved that all members or managers who practice the profession in this state are licensed in this state to render the same professional service as those for which the limited liability company was formed; and in an annual report, a statement that all members or managers who practice the profession in this state are licensed in this state to render the same professional service as those for which the limited liability company was formed.
8. a. The provisions of chapter 45-22 applicable to foreign limited liability partnerships apply to a foreign professional organization rendering professional services in this state in the form of a foreign limited liability partnership. Such a foreign professional organization enjoys the powers and privileges and is subject to the duties, restrictions, and liabilities of other foreign limited liability partnerships doing business in this state, except when inconsistent with the letter and purpose of the provisions of this chapter applicable to foreign professional organizations.
- b. A foreign professional organization rendering professional services in this state in the form of a foreign limited liability partnership shall include in its registration under section 45-22-03 the following information:
- (1) The profession to be practiced by the foreign limited liability partnership;
 - (2) The names and residence addresses of all partners of the limited liability partnership who practice the profession in this state; and
 - (3) In a registration, a certificate from the regulating board of the profession involved that all partners who practice the profession in this state are licensed in this state to render the same professional service as those for which the limited liability partnership was formed.
9. The name of a foreign professional organization rendering professional services in this state shall contain words or abbreviations required or authorized by the laws of the jurisdiction in which the foreign professional organization is incorporated, organized, or originally registered.

10-31-14. Construction. This chapter must be construed to effectuate its general purpose of making available to professional individuals the benefits of the corporate form, the benefits of the limited liability company form, and the benefits of the limited liability partnership form.