

## **53-12-2. Articles of incorporation.**

A. The articles of incorporation shall set forth:

- (1) the name of the corporation;
- (2) the period of duration, if other than perpetual;
- (3) the purpose for which the corporation is organized, which may include the transaction of any lawful business for which corporations may be incorporated under the Business Corporation Act [[Chapter 53, Articles 11 to 18](#) NMSA 1978];
- (4) the aggregate number of shares that the corporation has authority to issue and, if the shares are to be divided into classes, the number of shares of each class;
- (5) if the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class;
- (6) if the corporation is to issue the shares of any preferred or special class in series, the designation of each series and a statement of the variations in the relative rights and preferences as between series, insofar as they are to be fixed in the articles of incorporation and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;
- (7) any provision limiting or denying to shareholders the preemptive right to acquire unissued shares or securities convertible into such shares or carrying a right to subscribe to or acquire shares;
- (8) the address of its initial registered office and the name of its initial registered agent at the address;
- (9) the names and addresses of the persons who have consented to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualify; and
- (10) the name and address of each incorporator.

B. In addition to provisions required therein, the articles of incorporation may also contain provisions not inconsistent with law regarding:

- (1) the direction of the management of the business and the regulation of the affairs of the corporation;
- (2) the definition, limitation and regulation of the powers of the corporation, the directors and the shareholders, or any class of the shareholders, including restrictions on the transfer of shares;
- (3) the minimum consideration for any authorized shares or class of shares; and
- (4) any provision that, under the Business Corporation Act [[Chapter 53, Articles 11 to 18](#) NMSA 1978], is required or permitted to be set forth in the bylaws.

C. It is not necessary to set forth in the articles of incorporation any of the corporate powers enumerated in the Business Corporation Act [[Chapter 53, Articles 11 to 18](#) NMSA 1978].

D. The articles of incorporation may set forth any provision that the incorporators elect to set forth for the regulation of the internal affairs of the corporation.

E. The articles of incorporation may provide that a director shall not be personally liable to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director unless:

- (1) the director has breached or failed to perform the duties of the director's office in compliance with Subsection B of [Section 53-11-35](#) NMSA 1978; and
- (2) the breach or failure to perform constitutes:

(a) negligence, willful misconduct or recklessness in the case of a director who has either an ownership interest in the corporation or receives as a director or as an employee of the corporation compensation of more than two thousand dollars (\$2,000) from the corporation in any calendar year; or

(b) willful misconduct or recklessness in the case of a director who does not have an ownership interest in the corporation and does not receive as director or as an employee of the corporation compensation of more than two thousand dollars (\$2,000) from the corporation in any calendar year.

Such a provision in the articles of incorporation shall, however, only eliminate the liability of a director for action taken as a director or any failure to take action as a director at meetings of the board of directors or of a committee of the board of directors or by virtue of action of the directors without a meeting pursuant to [Section 53-11-43](#) NMSA 1978, on or after the date when such provision in the articles of incorporation becomes effective.

**History:** 1953 Comp., § 51-25-2, enacted by Laws 1967, ch. 81, § 50; 1975, ch. 64, § 27; 1983, ch. 304, § 43; 1987, ch. 238, § 12; 1988, ch. 39, § 1; 1991, ch. 170, § 7; 1993, ch. 318, § 3; 2003, ch. 318, § 35.