

2012 Kansas Statutes

17-6003. Execution, filing and effective date of corporate instruments, exceptions; execution constitutes affirmation of contents; validation of former acts. (a) When any provision of this act requires any instrument to be filed with the secretary of state or in accordance with this section, such instrument shall be executed as follows:

(1) The articles of incorporation shall be signed by the incorporator or incorporators, and any other instrument to be filed before the election of the initial board of directors, if the initial directors were not named in the articles of incorporation, shall be signed by the incorporator or incorporators. If any incorporator is not available by reason of death, incapacity, refusal or neglect to act, then the instrument may be signed by any person for whom or on whose behalf such incorporator was acting as employee or agent. The instrument shall state that the incorporator is not available and the reason therefor; that such incorporator was acting as employee or agent for or on behalf of such person; and that such person's signature is authorized.

(2) All other instruments shall be signed: (i) By any authorized officer of the corporation; (ii) if it appears from the instrument that there are no such officers, by a majority of the directors or by such directors as may be designated by the board; (iii) if it appears from the instrument that there are no such officers or directors, by the holders of record, or such of them as may be designated by the holders of record, of a majority of all outstanding shares of stock; or (iv) by the holders of record of all outstanding shares of stock.

(b) The execution of any document required to be filed with the secretary of state pursuant to chapter 17 of the Kansas Statutes Annotated shall constitute an oath or affirmation, under the penalties of perjury, that the facts stated in the document are true.

(c) When any provision of this act requires any instrument to be filed with the secretary of state or in accordance with this section, such requirement means that:

(1) The original signed instrument shall be delivered to the office of the secretary of state, where the instrument shall be recorded in an electronic medium. Any signature on documents authorized to be filed with the secretary of state under the provisions of this act may be a facsimile, a conformed signature or an electronically transmitted signature;

(2) all taxes and fees authorized by law to be collected by the secretary of state in connection with the filing of the instrument shall be tendered to the secretary of state;

(3) upon delivery of the instrument, and upon tender of the required taxes and fees, the secretary of state shall certify that the instrument has been filed in the office of secretary of state by endorsing upon the electronically-recorded document the word "Filed" and the date and hour of its filing. This endorsement is the "filing date" of the instrument and is conclusive of the date and time of its filing in the absence of actual fraud. The secretary of state shall thereupon record the endorsed instrument in an electronic medium; and

(4) the secretary of state shall return a certified copy of the recorded document, except this provision shall not apply to annual reports.

(d) Any instrument filed in accordance with subsection (c) shall be effective upon its filing date. Except where it has been determined otherwise by a court of competent jurisdiction, any instrument filed in accordance with subsections (c)(1) through (c)(4) prior to July 1, 1998, shall be deemed to be effective on the date it was so filed, unless a different effective date was specified for the instrument in accordance with this subsection, and the recording of such instrument with a register of deeds shall not be required in order for the instrument to take effect. Any instrument may provide that it is not to become effective until a specified date subsequent to its filing date, but such date shall not be later than 90 days after its filing date. If any instrument filed in accordance with subsection (c) provides for a future effective date and the transaction is terminated or its terms are amended to change the future effective date prior to the future effective date, the instrument shall be terminated or amended by the filing, prior to the future effective date, of a certificate of termination or a certificate of amendment of the original instrument, executed and filed in accordance with this section. The certificate shall identify the instrument which has been terminated or amended, and shall state that the instrument has been terminated or the manner in which it has been amended.

(e) If another section of this act or any other law of this state specifically prescribes a manner of executing or filing a specified instrument or a time when such instrument shall become effective, which differs from the corresponding provisions of this section, then the provisions of such other section shall govern.

(f) When any instrument authorized to be filed with the secretary of state under any provision of this act has been so filed and is an inaccurate record of the corporate action therein referred to, or was defectively or erroneously executed, such instrument may be corrected by filing with the secretary of state a certificate of correction of such instrument which shall be executed and filed in accordance with this section. The certificate of correction shall specify the inaccuracy or defect to be corrected and shall set forth the portion of the instrument in corrected form. In lieu of filing a certificate of correction, the instrument may be corrected by filing with the secretary of state a corrected instrument which shall be executed and filed in accordance with this section. The corrected instrument shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected, and shall set forth the entire instrument in corrected form. An instrument corrected in accordance with this section shall be effective as of the date the original instrument was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons, the corrected instrument shall be effective from the filing date.

(g) When any corporation conveys any lands or interests therein by deed or other appropriate instrument of conveyance, such deed or instrument shall be executed on behalf of the corporation by any authorized officer of the corporation. Such deed or instrument, when acknowledged by such officer to be the act of the corporation, or proved in the same manner provided for other conveyances of lands, may be recorded in the same manner and with the same effect as other deeds. Corporations likewise shall have power to convey by an agent or attorney so authorized under power of attorney or other instrument containing a power to convey real estate or any interest therein, which power of attorney shall be executed by the corporation in the same manner as herein provided for the execution of deeds or other instruments of conveyance.

(h) If any instrument authorized to be filed with the secretary of state is filed and is inaccurately, defectively or erroneously executed or otherwise defective in any respect, the secretary of state shall not be liable to any person for the preclearance for filing, the acceptance for filing or the filing and indexing such instrument.

History: L. 1972, ch. 52, § 3; L. 1973, ch. 100, § 2; L. 1984, ch. 201, § 12; L. 1987, ch. 89, § 1; L. 1998, ch. 39, § 1; L. 1999, ch. 41, § 10; L. 1999, ch. 149, § 1; L. 2000, ch. 39, § 1; L. 2004, ch. 143, § 2; L. 2009, ch. 64, § 1; July 1,

2010.