

17-78-601. Filing requirements; execution. (a) When any provision of this act requires any instrument to be filed with the secretary of state, such instrument shall be filed in accordance with this section:

- (1) The document shall contain the information required by this act;
- (2) the document shall be in a record;
- (3) the document shall be in the English language, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals;
- (4) the document shall be signed:
 - (A) By an officer of a domestic or foreign corporation;
 - (B) by a person authorized by a domestic or foreign entity that is not a corporation; or
 - (C) if the entity is in the hands of a receiver, trustee or other court-appointed fiduciary, by that person;
- (5) the instrument shall state the name and capacity of the person that signed it;
- (6) any signature on instruments authorized to be filed with the secretary of state under this act may be a facsimile, a conformed signature or an electronically transmitted signature. The execution of any instrument required to be filed with the secretary of state shall constitute an oath or affirmation, under the penalties of perjury, that the facts stated in the instrument are true; and
- (7) the instrument shall be delivered to the office of the secretary of state for filing. Delivery may be made by electronic transmission if and to the extent permitted by the secretary of state.

(b) When a document is delivered to the office of the secretary of state for filing, the correct filing fee and any tax, fee or penalty required to be paid by this act or other law shall be paid. The secretary of state shall establish by rule and regulation the filing fees for instruments filed pursuant to this act.

(c) Upon delivery of the instrument and upon tender of the required fees and any taxes:

(1) The secretary of state shall certify that the instrument has been filed in the office of secretary of state by endorsing upon the original signed instrument 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

(2) the secretary of state shall return a certified copy of the recorded instrument.

(d) Any instrument filed in accordance with this section shall be effective upon its filing date unless a later effective date, not to exceed 90 days from the date of filing, was specified in the instrument.

(e) 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.

(f) Whenever a provision of this act permits any of the terms of an agreement or a filed document to be dependent on facts objectively ascertainable outside the agreement or filed document, the following rules apply:

(1) The manner in which the facts will operate upon the terms of the agreement or filed document must be set forth in the agreement or filed document;

(2) the facts may include, but are not limited to:

(A) Any of the following that is available in a nationally recognized news or information medium either in print or electronically, statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates or similar economic or financial data;

(B) a determination or action by any person or body, including the entity or any other party to an agreement or filed document; or

(C) the terms of, or actions taken under, an agreement to which the entity is a party or any other agreement or document;

(3) in this subsection, "filed document" means a document filed with the secretary of state under this act. The following provisions of an agreement or filed document may not be made dependent on facts outside the agreement or filed document:

(A) The name and address of any person required in a filed document;

(B) the registered office of any entity required in a filed document;

(C) the resident agent of any entity required in a filed document;

(D) the number of authorized shares and designation of each class or series of shares of a corporation;

(E) the effective date of a filed document; and

(F) any required statement in a filed document of the manner in which that approval was given;

(4) if a provision of a filed document is made dependent on a fact ascertainable outside of the filed document and that fact is not ascertainable by reference to a source described in subsection (c)(2)(A) or a document that is a matter of public record, or if the affected interest holders have not received notice of the fact from the entity, the entity shall file with the secretary of state a certificate of amendment setting forth the fact promptly after the fact referred to is first ascertainable or thereafter changes.

History: L. 2009, ch. 47, § 35; July 1, 2010.