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[Chapter] 164
RECORDS AND REPORTS

Subchapter
A. Records
B. Reports

[Subchapter] A
RECORDS

§ 16.01401. CORPORATE RECORDS
(a) A nonprofit corporation must keep as permanent records minutes of all meetings of its
members, board of directors, and any designated body, a record of all actions taken by
the members, board of directors, or members of a designated body without a meeting, and a
A nonprofit corporation must maintain appropriate accounting records.

A membership corporation or its agent must maintain a record of its members, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

A nonprofit corporation must maintain its records in written form or in any other form of a record.

A nonprofit corporation must keep a copy of the following records at its principal office:

1. Its articles of incorporation or restated articles of incorporation and all amendments to them as currently in effect;
2. Its bylaws or restated bylaws and all amendments to them as currently in effect;
3. The minutes and records described in subsection (a) for the past three years; any notices to members referred to in Section 105 (extrinsic facts in filed record) specifying facts on which a filed document is dependent if those facts are not included in a document on file with the secretary of state;
4. All communications in the form of a record to members generally within the past three years, including the financial statements furnished for the past three years under Section 16.20;
5. Minutes of all meetings of, and records of all actions taken without a meeting by, its members, board of directors, board committees established under Section 825 (board and advisory committees), and any designated body;
6. A list of the names and business addresses of its current directors and officers; and
7. Its most recent annual report delivered to the secretary of state under Section 16.21421 (annual report for secretary of state).

A nonprofit corporation must maintain appropriate accounting records in a form that permits preparation of the financial statements required by Section 420 (financial statements for members).

A nonprofit corporation must maintain all annual financial statements prepared for the corporation for its last five fiscal years (or such shorter period of existence) and any audit or other reports with respect to those financial statements.
(d) A nonprofit corporation must maintain a record of its current members by class of membership showing an address for each member, which may be an email address or other electronic contact information of the member.

(e) A nonprofit corporation must maintain the records specified in this section in a manner that permits them to be made available for inspection within a reasonable time.


CROSS-REFERENCES

Action by members without meeting, see § 7.04704.
Board of directors’ meeting, see § 8.20820.
Committees of board of directors, see § 8.25825.
“Deliver” defined, see § 1.40102.
Directors’ action without meeting, see § 8.21821.
Inspection of corporate records, see §§ 16.02402 and 16.04405.
Meetings of members, see §§ 7.01-7.03 Ch. 7.
Officers, see § 8.40 Subch. 8D.
“Principal office”: defined, see § 1.40102.
designated in annual report, see § 16.21421.

Reports of corporation, see §§ 16.20-16.21.
Restatement of articles of incorporation, see § 10.07.

OFFICIAL COMMENT

Section 16.01 describes in general terms the records every nonprofit corporation must keep or maintain, the form in which they may be maintained, and, to a limited extent, where the records must be kept.

1. Records to be Maintained

Section 401(a) requires certain basic records to be maintained by the nonprofit corporation. The act does not generally specify how records must be maintained (other than in a manner so that they may be made available for inspection within a reasonable time) or where they must be located.

2. Minutes and Related Documents

Section 16.01401(a) requires a nonprofit corporation to “keep” as permanent records the minutes of meetings of its members, board of directors, and any designated body, and a record of actions taken by consent by those groups without a meeting. In addition, each corporation must “keep” a record of all actions taken by a committee of the board of directors or a designated body;
this includes, for example, action taken by an executive committee between meetings of the board and final action of a special litigation committee authorized to act on behalf of the board. (5) does not address the amount of detail that should appear in minutes or records of actions without a meeting. Minutes of meetings customarily include the formalities of notice, the time and place of the meeting, those in attendance, and the results of any votes. Minutes of meetings and records of actions without a meeting show formal action taken. The extent to which further detail is included is a matter of judgment which may depend on the circumstances or other applicable law. Section 704, which addresses written actions taken by members, requires that consents by members be delivered to the corporation for filing with the corporate records.

Section 16.01(a) does not require a record of actions taken by a committee when the committee is not acting in place of the board of directors or a designated body, e.g., when the committee is discussing policy and formulating recommendations for action by the board of directors. Also, it does not require either minutes or a record of committee deliberations under any circumstances. Committee meetings are preserved as forums for open and frank discussion and discussion of sensitive corporate data without fear of recordation or disclosure.

Section 16.01 also does not address the amount of detail that should appear in the minutes of meetings—the content of minutes is largely fixed by tradition and no inference about their content should be drawn from the section’s treatment of the records of committee deliberation and action.

The minutes of a designated body required to be kept under Section 16.01(a) are for meetings when the designated body is meeting with respect to the affairs of the nonprofit corporation. What practices must be followed by the designated body when meeting in a situation not related to the nonprofit corporation will be determined by other law or practice.

23. Member Lists

Sections 16.01(b) and (c) require the nonprofit corporation to “maintain” appropriate accounting and member records. The word “maintain” is used to denote current records only and does not require the corporation to keep on hand as permanent records, data, or information of historical interest only; the periods for which these records, data, or information should be kept is not addressed by the act.

Section 16.01(b) relates to the fact that the act does not provide normative standards for the financial statements and accounting records to be prepared or maintained. The word “appropriate” is used to indicate that the nature of the financial records to be kept is dependent to some extent on the nature of the nonprofit corporation’s activities; the phrase “adequate records” is used in some state statutes to convey essentially the same meaning. The act does not require that the corporation prepare and maintain accounting records or financial statements on the basis of generally accepted accounting principles (“GAAP”) if it is not otherwise required to prepare GAAP financial statements. “Appropriate” records are generally records that permit financial statements to be prepared which fairly present the financial position and transactions of the corporation. In some very small corporations operating on a cash basis, however, “appropriate” accounting records may consist only of a check register, vouchers, and receipts.

Section 16.01(c) requires the nonprofit corporation to maintain such records of its members as will permit it to compile a list of members when required.
3. Form of Records

Section 16.01(d) generally authorizes nonprofit corporations to retain records in the form of a record. The basic requirement is that the method chosen must be capable of retrieval in perceivable form. See the definition of “record” in Section 1.40. In addition, in the case of the record of members, the method must permit the development of an alphabetical list of members of record as required by Section 16.01(e).

4. Keeping Records at Principal Office

Section 16.01(e) requires certain basic records to be kept at the principal office of the nonprofit corporation, including minutes of member meetings for the preceding three years and records of member action taken without a meeting during the same period. This requirement is imposed because these records must be available for inspection by any member at that office. See Section 16.02(a). The “principal office” of the corporation is defined in Section 1.40 to be the location of the executive offices of the corporation and its address must be set forth by the corporation in its annual report required by Section 16.21. The act does not generally specify where records other than those described in Section 16.01(e) must be kept. They may be kept in one or more offices within or without the state; indeed, in the case of records kept in nonwritten form, it may be impossible to determine “where” they are located.

§ 16.02402. Inspection Rights of Records by Members

(a) A member of a nonprofit corporation is entitled to inspect and copy, during regular business hours at the corporation’s principal office, any of the records of the corporation described in Section 16.01(e) (corporate records), excluding minutes of meetings of, and records of actions taken without a meeting by, the board of directors, board committees established under Section 825 (board and advisory committees) and any designated body, if the member delivers to the corporation a signed notice in the form of a record of the member’s demand at least five business days before the date on which the member wishes to inspect and copy.

(b) A member of a nonprofit corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) and delivers to the corporation a signed notice in the form of a record of the member’s demand at least five business days before the date on which the member wishes to inspect and copy:

1. Excerpts from any records required to be maintained under Section 16.01(a), to the extent not subject to inspection under Section 16.02(a); financial statements prepared by or for the corporation;

2. Accounting records of the corporation; and

3. Excerpts from minutes of any meeting of, or records of any actions taken without a meeting by, the board of directors, board committees maintained in accordance with Section 401(a); and

4. Subject to Section 16.07407 (limitations on use of membership list), the membership list.
(c) A member may inspect and copy the records described in subsection (b) only if:

(1) the member’s demand is made in good faith and for a proper purpose;

(2) the member describes with reasonable particularity the member’s purpose and the records the member desires to inspect; and

(3) the records are directly connected with the member’s purpose.

(d) The nonprofit corporation may impose reasonable restrictions on the confidentiality, use, or distribution of records described in subsection (b).

(e) The right of inspection granted by this subsection (b) may not be abolished or limited by the nonprofit corporation’s articles of incorporation or bylaws.

(f) This section does not affect:

(1) the right of a member to inspect records under Section 7.2070 (members list for meeting) or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

(2) the power of a court, independently of this act, to compel the production of corporate records for examination and to impose reasonable restrictions as provided in Section 404(c) (court-ordered inspection).


CROSS-REFERENCES

Board of directors’ meeting, see § 8.20820. Committees of board of directors, see § 8.25825. Corporate records required, see § 16.01401. Court-ordered inspection, see § 16.04404. “Deliver” defined, see § 1.40102. Directors’ action without meeting, see § 8.21821. Effective date of notice, see § 1.41. Notice, see § 1.41. “Principal office”: defined, see § 1.40102. designated in annual report, see § 16.21421.

OFFICIAL COMMENT
1. **SECTION 16.02(a) Scope of inspection right.**

Section 16.02(a) provides that every member is entitled to examine upon demand at the principal office of the nonprofit corporation all documents described in Section 16.01(e). These documents all deal with the member’s interest as such in the corporation. While some of these documents may also be a matter of public record in the office of the secretary of state, a member should not be compelled to go to a public office that may be physically distant to examine the basic documents relating to the corporation.

2. **SECTION 16.02(b)**

Section 16.02(b) grants a member who meets the requirements of Section 16.02(c) the right to inspect three classes of corporate records:

1. Of actions taken by the board of directors and board committees related to the Excerpts from minutes required to be maintained under Section 16.01(a) (to the extent they do not fall within Section 16.02(a)). The corporation is required to make available only relevant excerpts of minutes and need not make available minutes of entire meetings merely because a portion of the minutes is directly connected with the member’s purpose.

2. The accounting records of the corporation. The act does not attempt to define what accounting records must be kept. See the Official Comment to Section 16.01.

3. The list of members, subject to Section 16.07. It is independent of the right to inspect a membership list immediately before a meeting under Section 7.20. See Section 16.02(e).

32. **SECTION 16.02(e) Proper purpose requirement.**

Section 16.02(c) permits inspection of the records described in Section 16.02(b) by a member only if demand is made in good faith and for a “proper purpose.” A “proper purpose” under Section 402(c) means a purpose that is reasonably relevant to the demanding member’s interest as a member. Some statutes do not use the phrase “proper purpose”; the act continues to use it because it is traditional and well understood language defining the scope of the member’s right of inspection and its use ensures that the very substantial case law that has developed under it will continue to be applicable.

As a practical matter, a member who alleges a purpose in general terms, such as to communicate with fellow members, or to determine whether improper transactions have occurred, has been held to allege a “proper purpose.” Section 16.02(c) thus attempts to require more meaningful statements of purpose, if feasible, by requiring that a member designate “with reasonable particularity” the purpose and the records sought to be inspected; the records demanded must also be “directly connected” with that purpose. If disputed by the nonprofit corporation, the “connection” of the records to the member’s purpose may be determined by a court’s in camera examination of the records.
3. **Reasonable restrictions permitted.**

The reasonable restrictions on the confidentiality, use, or distribution of financial statements and records permitted by Section 402(d) allow for the protection of confidential or proprietary information in the nonprofit corporation’s records or sensitive matters that might be disclosed in a member’s inspection. Such restrictions might include, for example, requiring the demanding member to sign a confidentiality and use agreement.

4. **SECTION 16.02(d) AND (e) Limitations on inspection rights.**

Section 16.02(d) states that the inspection rights granted by this chapter are inherent rights of members and may not be abolished or limited by the articles of incorporation or bylaws. No inference of any kind should be drawn from this subsection Section 402(e) as to whether other, unrelated sections of the act may be modified by provisions in the articles of incorporation or bylaws.

Section 16.02(e) provides that the right of inspection granted by Section 16.02 is an independent right of inspection that is not a substitute for or in derogation of rights of inspection that may exist under Section 7.207 to inspect the membership list following the establishment of a record date for a meeting; as part of a right of discovery that exists in connection with litigation; and as a “common law” right of inspection, if any is found to exist by a court, to examine corporate records. Section 16.02(e) simply preserves whatever independent right of inspection exists under these sources and does not create or recognize any rights, either expressly or by implication.

§ 16.03. **SCOPE OF INSPECTION RIGHT**

(a) A member may appoint an agent or attorney to exercise the same member’s inspection and copying rights as the member represented under Section 402 (inspection rights of members).

(b) The nonprofit corporation may, if reasonable, satisfy the right of a member to copy records under Section 16.02 includes, if reasonable, the right to receive copies. Copies may be provided through an electronic transmission if available and so requested by the member by furnishing to the member copies by such means as are chosen by the corporation, including furnishing copies through electronic delivery.

(c) The nonprofit corporation may comply at its expense with a member’s demand to inspect the record of members under Section 16.02 by providing the member with a list of members that was compiled no earlier than the date of the member’s demand.

(d) The nonprofit corporation may impose a reasonable charge, covering the costs of labor and material, for providing copies of any documents provided to the member.
charge may not exceed the estimated cost of production, reproduction, or transmission of the records, which may be based on an estimate of those costs.


CROSS-REFERENCES

Corporate records, see § 16.01401.
Court-ordered inspection, see § 16.04404.
Inspection right generally, see § 16.02402.
Membership list inspection, see § 7.20720.

OFFICIAL COMMENT

The right of inspection set forth in Section 16.02402 includes the general right to copy the documents/records inspected. Section 16.03403 follows precedent established under earlier statutes and extends the right of inspection to an agent or attorney of a member as well as the member. The right to copy means more than a right to copy by longhand and extends to the right to receive copies made by copying machines or through an electronic transmission with the cost of reproduction and transmission electronic copies being paid by the member. The requirement of availability with respect to electronic transmissions is intended to insure that the nonprofit corporation can provide the document electronically and that an undue burden is not placed on the corporation to provide copies through an electronic transmission or other similar means.

Section 16.03403(c) is designed to give the nonprofit corporation the option of providing a reasonably current list of its members instead of granting the right of inspection. A “reasonably current” list is defined in Section 16.03403(c) as one compiled no earlier than the date of the written demand, which under Section 16.02402(b) must provide at least five days’ notice.

Many nonprofit corporations make available to members without charge some or all of the basic documents/records described in Section 16.01401(a). Section 16.03403(d) authorizes the corporation to charge a reasonable fee based on reproduction costs (including labor and materials) for providing a copy of any document. The phrase “estimated cost of production, reproduction or transmission of the records” in Section 16.03(d) refers to the cost of assembling information and data to meet a demand as well as the cost of reproducing and transmitting documents that are already in existence.

Section 7.20720 creates a right of members to inspect a list of members in advance of and at a meeting that is independent of the rights of members to inspect corporate records under chapter 16 Section 402.
§ 16.04404. COURT-ORDERED INSPECTION

(a) If a nonprofit corporation does not allow a member who complies with Section 16.02(a) (inspection rights of members) to inspect and copy any records required by that subsection to be available for inspection, the [name or describe court] of the county where the corporation’s principal office (or, if none in this state, its registered office) is located may summarily order inspection and copying of the records demanded at the corporation’s expense upon application of the member.

(b) If a nonprofit corporation does not within a reasonable time allow a member that complies with Section 402 to inspect and copy any other records as required by that section, the member who complies with Sections 16.02(b) and (c)Section 402 may apply to the [name or describe court] in the county where the corporation’s principal office (or, if none in this state, its registered office) is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it under Section 402, it may impose reasonable restrictions on their confidentiality, use or distribution by the demanding member and it shall also order the nonprofit corporation to pay the member’s costs (including reasonable counsel fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had:

(1) a reasonable basis for doubt about the right of the member to inspect the records demanded; or

(2) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the confidentiality, use or distribution of the records to which the demanding member was unwilling to agree.


CROSS-REFERENCES

Corporate records, see § 16.01.
Inspection rights of members, § 402.
Principal office”: defined, see § 1.40102.
Designated in annual report, see § 16.21421.
Registered office:
 Section 16.04404 provides a judicial remedy if a nonprofit corporation refuses to grant the right of inspection provided by Section 16.02402.

If the right of inspection under Section 16.02402(a) is invoked and the nonprofit corporation refuses to grant inspection, the member may seek a summary order compelling inspection. A summary order is appropriate since the right of inspection under this subsection is either automatic or subject only to a determination that the person is in fact a member of the corporation. By contrast, if inspection is demanded under Section 16.02402(b), the member’s good faith and purpose may be in issue; in this situation Section 16.04404(b) directs the court to handle the proceeding “on an expedited basis.” The purpose of this phrase is to discourage dilatory tactics to avoid or delay inspection without requiring the court to resolve these issues on a summary basis. This language does not mandate any specific procedure by which these issues are to be resolved.

If a court enters a summary order directing inspection under Section 16.02402(a), the cost of reproducing the records, if any, is placed on the nonprofit corporation. Section 16.04404 does not address who should bear the cost of reproducing other records ordered by the court, which is a matter for the courts to decide in light of the policy of the act that costs of reproduction are generally the responsibility of the requesting member and should be assessed against the member.

The principal sanction against unreasonable delay or refusal to grant inspection is provided by Section 16.04404(c), which imposes on the nonprofit corporation the plaintiff’s costs, including attorneys’ fees, unless the corporation can establish that it acted reasonably. The corporation may avoid these costs by showing that the corporation refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded. This normally will involve reasonable doubt whether the member had the necessary good faith and proper purpose or whether the records demanded are directly connected to the member’s purpose. The phrase “in good faith because the corporation had a reasonable basis for doubt” establishes a partially objective standard, in that the corporation must be able to point to some objective basis for its doubt that the member was acting in good faith or had a purpose that was proper. For example, a corporation may point to earlier conduct of the member involving improper use of information obtained from the corporation in the past as indicating that reasonable doubt existed as to his present purpose. A corporation may not avoid the imposition of costs under this section merely by showing it had no information one way or the other about the issues in controversy.

§ 16.05405. INSPECTION RIGHTS OF RECORDS BY DIRECTORS
(a) A director of a nonprofit corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director’s duties as a director, including duties as a member of a board committee, but not for any other purpose or in any manner that would violate any duty to the corporation or law other than this [actAct].

(b) The [name or describe the court] of the county where the nonprofit corporation’s principal office (or if none in this state, its registered office) is located may order inspection and copying of the books, records, and documents at the corporation’s expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall must dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the nonprofit corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director’s costs (including reasonable counsel fees)expenses incurred in connection with the application.


CROSS-REFERENCES

Corporate records, see § 16.01401.
Court-ordered inspection, see § 16.04404.
Duties of board of directors, see § 8.01801.
Director standards of conduct, see § 8.30830.

OFFICIAL COMMENT

The purpose of Section 16.05405(a) is to confirm the principle that a director always is entitled to inspect books, records, and documents to the extent reasonably related to the performance of the director’s oversight or decisional duties so long as the requested inspection is not for an improper purpose and the director’s use of the information obtained would not violate any duty to the nonprofit corporation. The statute attempts to reconcile and balance competing principles articulated in the common law which suggest that Section 405(a) provide a director has a nearly “absolute” right to information, subject only to limitation if it can be shown that the director has an improper motive or intent in asking for the information or would violate law by receiving the information. In addition, the statutory provision sets forth a remedy for the director in circumstances where the corporation improperly denies the right of inspection.

Under subsection Section 405(a), a director typically would be entitled to review books, records, and documents relating to matters such as (i) compliance by a nonprofit corporation
with applicable law, (ii) adequacy of the corporation’s system of internal controls to provide
accurate and timely financial statements and disclosure documents, or (iii) the proper operation,
maintenance and protection of the corporation’s assets. In addition, a director would be entitled
to review books and records and documents to the extent required to consider and make
decisions with respect to matters placed before the board. Inspection by a director may be
limited, however, by applicable privacy laws.

Subsection Section 405(b) provides for a director with the right to seek court order on an
expedited basis a court order permitting inspection and copying of the books, records, and
documents of the nonprofit corporation, at the corporation’s expense. There is a
presumption that significant latitude and discretion should be granted to the director, and the
nonprofit corporation has the burden of establishing that the director is not entitled to inspection
of the documents requested. Circumstances where the director’s inspection rights might be
denied include requests that (i) are not reasonably related to performance of a director’s duties
(e.g., seeking a specified confidential document not necessary for the performance of a director’s
duties), (ii) impose an unreasonable burden and expense on the corporation (e.g., compliance
with the request would be duplicative of information already provided or would be unreasonably
expensive and time-consuming), (iii) violate the director’s duty to the corporation (e.g., the
director could reasonably be expected to use or exploit confidential information in personal or
third-party transactions), or (iv) violate any applicable law (e.g., the director does not have the
necessary governmental security clearance to see the requested classified information).

Section 16.05405 does not directly deal with the ability of a director to inspect records of
a subsidiary of which he or she is not also a director. A director’s ability to inspect records of a
subsidiary generally should be exercised through the parent’s rights or power and subsection (a)
does not independently provide that right or power to a director of the parent. In the case of
wholly-owned subsidiaries, a director’s ability to inspect should approximate his or her rights
with respect to the parent. In the case of a partially-owned subsidiary, the ability of the director
to inspect is likely to be influenced by the level of ownership of the parent (this ability can be
expected to be greater for a subsidiary which is part of a consolidated group than for a minority-
owned subsidiary). In any case, the inspection by a director of the parent will be subject to the
parent’s fiduciary obligation to the subsidiary’s other members.

Subsection Section 405(c) provides that the court may place limitations on the use of
information obtained by the director and may include in its order other provisions protecting the
nonprofit corporation from undue burden or expense. Further, the court may order the
corporation to reimburse the director for costs (including reasonable counsel fees) incurred in
connection with the application. The amount of any reimbursement is left in the court’s
discretion, since it must consider the reasonableness of the expenses incurred, as well as the fact
that a director may be only partially successful in the application.

The rights granted by this section are also available to members of a designated body. See
Section §12812.

§ 16.06. —EXCEPTION TO NOTICE REQUIREMENT
(a) Whenever notice would otherwise be required to be given under any provision of this act to a member, the notice need not be given if notice of two consecutive annual meetings, and all notices of meetings during the period between such two consecutive annual meetings have been returned undeliverable or could not be delivered.

(b) If a member delivers to the nonprofit corporation a notice setting forth the member’s then-current address, the requirement that notice be given to that member is reinstated.


CROSS-REFERENCES
Annual meeting, see § 7.01.
Notice, see § 1.41.

OFFICIAL COMMENT
Section 16.06 balances the requirement that the nonprofit corporation deliver notice to members regarding meetings and the practical need to allow corporations to cease providing notices where notices are being returned undelivered and it is clear that the member no longer is located at the address previously provided to the corporation. Absent such a provision, the corporation technically may be required to continue to attempt to deliver a notice to the member in order to satisfy a statutory requirement regarding notices to members or otherwise risk questions concerning the validity of the meeting for which the notice is required.

Section 16.06 provides that notice is not required to be given to a member if a notice of two consecutive annual meetings, and all notices required during the period between the meetings, are returned undeliverable. In this instance, notice is not required, and any meeting that is held will have the same force and effect as if notice had been given. The notice for a particular member is reinstated if a notice setting forth the member’s then-current address is delivered to the nonprofit corporation.

Based upon these provisions, the nonprofit corporation generally will be required to continue to provide the notice unless undeliverable items are returned over a period that could not be less than twelve months and could extend for up to twenty-four months. For instance, if the first undeliverable communication were delivered to a member six months before the next notice of an annual meeting is required, the corporation would have to wait until the annual meeting notice proves to be undeliverable to commence the non-delivery period, and then would have to wait until the next annual meeting notice after that also proves to be undeliverable before suspending the notification requirement. This amounts to a non-delivery period of eighteen months which could extend to two years under the right circumstances. It is believed that this accomplishes the proper balance between protecting the rights of members and eliminating unnecessary notices.

§ 16.07406. LIMITATIONS ON USE OF MEMBERSHIP LIST

(a) Without consent of the board of directors, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member’s interest as a member. Without limiting the generality of the foregoing, without the consent of the board a membership list or any part thereof may not be:

(1) used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the nonprofit corporation;
(2) used for any commercial purpose; or

(3) sold to or purchased by any person.

(b) Instead of making a membership list available for inspection and copying under this [subchapter Subchapter], a nonprofit corporation may elect to proceed under the procedures set forth in Section 7.20720(f) (members list for meeting).


CROSS-REFERENCES

Court-ordered inspection, see § 16.04104.
Inspection rights, see § 16.02402.
“Member” defined, see § 1.40102.
Required corporate records, see § 16.01401.
Voting lists, see § 7.20720.

OFFICIAL COMMENT

A nonprofit corporation’s membership list is a valuable asset. In many cases, the membership list may represent a list of contributors. Section 16.07407 sets forth the basic premise that a membership list may not be obtained or used by any person for any purpose unrelated to a member’s interest as a member. Section 407 then provides that a membership list may not be used in any of the following three purposes without the board’s consent:

(1) The solicitation of money or property unless the money or property will be used solely to solicit the votes of members in an election held by the corporation. A membership list therefore cannot be used by members who in good faith believe the organization has strayed from its purposes and want to solicit the members to contribute to a competitive organization that is carrying out the true purposes of the corporation whose membership list is sought. Nor can members use a membership list to solicit contributions for a non-competitive organization, even if the non-competitive organization has laudable purposes.

(2) Used for any commercial purpose. Commercial organizations frequently desire to use membership lists of nonprofit organizations to contact members. That use is only allowed if approved by the board of directors of the nonprofit corporation.

(3) Sold to or purchased by any person. Members of a nonprofit organization do not have the right to sell a membership list to any person. Nor may a person seeking a membership list purchase it except from the corporation with the approval of the board of directors.
A nonprofit corporation must have some factual basis for believing that the member seeking the membership list will violate the provisions of Section 16.07407 to deny inspection rights pursuant to Section 16.07407. If a corporation has a legitimate doubt as to the purposes for which a member seeks a membership list, the matter can be heard by a court pursuant to Section 16.04404. The court should closely scrutinize the transaction to determine whether a member has a legitimate purpose or whether the corporation was simply using Section 16.07407 as a ruse to prevent and frustrate a member’s rights. See the Official Comment to Section 16.04404 for the circumstances in which a court may order the corporation to pay attorney fees and costs.

[Subchapter] B
REPORTS

§ 16.20 § 420. FINANCIAL STATEMENTS FOR MEMBERS

(a) On demand in the form of a record from a member, a nonprofit corporation must furnish that member with its latest annual financial statements, which for its latest completed fiscal year within a reasonable time after receipt of the demand. The financial statements may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year and a statement of operations for the year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If the annual financial statements are reported upon by a certified public accountant, the accountant’s report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the nonprofit corporation’s accounting records:

(1) stating the reasonable belief of the president or other person as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.


CROSS-REFERENCES
Inspection of records, see § 16.02402.

OFFICIAL COMMENT

Section 16.20420 requires every nonprofit corporation to provide to a member that so requests annual financial statements consisting of a balance sheet as of the end of the fiscal year and a statement of operations for the year. A nonprofit corporation is not otherwise required by this act to provide financial statements to its members, but the articles of incorporation or bylaws may require the preparation and distribution of annual financial statements. A member who is entitled to request a financial statement is defined in Section 1.40102 as a person with the right to vote on a specified matter or a designated body under certain circumstances.

Consolidated statements of the corporation and any subsidiary, or subsidiaries, or combined statements for corporations under common control, may be used. Section 16.20420 does not require financial statements to be prepared on the basis of generally accepted accounting principles (“GAAP”). Many small nonprofit corporations have never prepared financial statements on the basis of GAAP. “Cash basis” financial statements (often used in preparing the tax returns of small corporations) do not comply with GAAP. Even small corporations that keep accrual basis records frequently do not make the adjustments that may be required to present their financial statements on a GAAP basis. In light of these considerations, it would be too burdensome on some small corporations to require GAAP statements. Accordingly, internally or externally prepared financial statements prepared on the basis of other accounting practices and principles that are reasonable in the circumstances will suffice for these types of corporations. If a corporation does prepare financial statements on a GAAP basis for any purpose for the particular year, however, it must send those statements to the members by upon demand to meet the requirements of the last sentence of Section 16.20420(a).

Section 16.20420(b) requires an accompanying report or statement in one of two forms: (1) if the financial statements have been reported upon by a public accountant, that report must be furnished; or (2) in other cases, a statement of the president or the person responsible for the corporation’s accounting records must be furnished (i) stating the person’s reasonable belief as to whether the financial statements were prepared on the basis of generally accepted accounting principles, and, if not, describing the basis on which they were prepared, and (ii) describing any respects in which the financial statements were not prepared on a basis of accounting consistent with those prepared for the previous year.

In requiring a statement by the president or person responsible for the corporation’s financial affairs, it is recognized that in many cases this person will not be a professionally trained accountant and should not be held to the standard required of a professional. To emphasize this difference, Section 16.20420 requires a “statement” (rather than a “report” or “certificate”) and calls for the person to express a “reasonable belief” (rather than “opinion”) about whether or not the statements are prepared on the basis of GAAP or, if not, to describe the basis of presentation and any inconsistencies in the basis of the presentation as compared with the previous year. The person is not required to describe any inconsistencies between the basis of presentation and GAAP. For example, the description might state, with respect to a cash basis...
statement of receipts and disbursements, that the statement was prepared on that basis and that it
presents the cash receipts and disbursements of the entity for the period but does not purport to
present the results of operations on the accrual basis of accounting.

This section does not prescribe a set period of time in which the financial statements must
be delivered to the members. Failure to comply with the requirements of Section 16.20 does not
adversely affect the existence or good standing of the nonprofit corporation. Rather, failure to
comply gives an aggrieved member rights to compel compliance or to obtain damages, if they
can be established, under general principles of law.

§ 16.21 § 421. ANNUAL REPORT FOR SECRETARY OF STATE

(a) Each domestic nonprofit corporation, and each foreign nonprofit corporation
authorized to conduct activities in this state, must deliver to the secretary of state for filing an
annual report that sets forth:

(1) the name of the corporation and the state or country under whose law it
is incorporated;

(2) the address and mailing addresses of its registered office and the
name of its registered agent at that office in this state;

(3) the address and mailing addresses of its principal office; and

(4) the names and business addresses of its directors and principal officers.

(b) Each foreign nonprofit corporation registered to do business in this state must
deliver to the secretary of state for filing an annual report that sets forth:

(1) the name of the foreign corporation and, if the name does not comply with
Section 210 (corporate name), an alternate name as required by Section 1306 (noncomplying
name of foreign corporation):

(2) the foreign corporation’s governing jurisdiction;

(3) the street and mailing addresses of the foreign corporation’s principal
office and, if the law of the foreign corporation’s governing jurisdiction requires the foreign
corporation to maintain an office in that jurisdiction, the street and mailing addresses of that
office;

(4) the street and mailing address of the foreign corporation’s registered office
in this state and the name of its registered agent at that office;

(5) the names and business addresses of its directors and principal officers.
Information in the annual report must be current as of the date the annual report is signed on behalf of the nonprofit corporation.

The first annual report must be delivered to the secretary of state between January 1 and April 1 of the year following the calendar year in which a domestic nonprofit corporation was incorporated or a foreign nonprofit corporation applied for a certificate of authority under [Chapter] 15 was registered to do business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 1 of the following calendar years.

If an annual report does not contain the information required by this section, the secretary of state shall deliver a notice in the form of a record to the reporting domestic or foreign nonprofit corporation and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice from the secretary of state becomes effective as determined in accordance with Section 103 (notice), it is deemed to be timely filed.

See Sections 14.20(2)140 (grounds for administrative dissolution) and 15.301.311(4a) (grounds for revocation2) (administrative termination of registration).


CROSS-REFERENCES

Annual report form prescribed by secretary of state, see § 1.21421.
“Deliver” defined, see § 1.40102.
Effective time and date of filing, see § 1.23163.
Filing fees, see § 1.22162.
Filing and signature requirements, see § 1.20.
Involuntary Grounds for administrative dissolution for failure to file annual report, see § 14.20.1140
Notice, see § 1.44103.
Officers, see § 8.40840.
“Principal office” defined, see § 1.40102.
Registered agent, see §§ 5.01 and 15.07 Subch. 2B.
Registered office, see §§ 2.02, 5.01, and 15.07 Subch. 2B.

Revocation of certificate of authority for failure to file annual report, see § 15.30.

OFFICIAL COMMENT

The annual report that each nonprofit corporation must submit to the secretary of state is a limited information document for use by the secretary of state, members of the general public, and members. The purpose of the annual report is to show the location of the principal office of
the corporation, the names and business addresses of its directors and principal officers, the
general nature of the corporation’s activities. It permits members of the general public to
ascertain the identity of the corporation and communicate directly with it. It also establishes the
alternative to the registered office for service of process and related matters. The “principal
office” of the corporation is defined as the location of its executive office in Section 1.40.

The reference to “principal officers” in Section 16.21421(a)(4) is intended to simplify
reporting requirements of nonprofit corporations with very large numbers of employees who
have some managerial responsibility and who, for business reasons, are designated as officers. The
“principal officers” of a corporation include at least the chair of the board of directors, the chief
executive officer, and the officers performing the traditional functions performed by the
corporate secretary and treasurer, no matter what their designation.

The annual report is required of both domestic nonprofit corporations and foreign
nonprofit corporations qualified to conduct activities in the state. The failure to file the annual
report, like the failure to satisfy other mandatory requirements of the act, is a ground for
administrative dissolution or revocation of the certificate of authority to conduct activities.
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