§ 2853. Nursing home companies; how created. 1. Notwithstanding the provisions of any other law or requirement to the contrary, non-profit nursing home companies shall be incorporated and organized pursuant to the not-for-profit corporation law and this article.

In addition to those matters required to be set forth in the certificate of incorporation by the not-for-profit corporation law, the certificate shall state:

a. That, among the purposes for which it is formed, the company is to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate one or more nursing home projects pursuant to this article.

b. The number of directors, which shall be not less than three nor more than thirty-five. One additional director may be designated by the commissioner. In the absence of fraud or bad faith, the director appointed by the commissioner shall not be personally liable for the debts, obligations or liabilities of the company.

c. That the real property of the company shall not be sold, transferred, encumbered or assigned except as permitted by the provisions of this article.

d. That the company has been organized exclusively to serve a public purpose and that it shall be and remain subject to the supervision and control of the commissioner pursuant to the provisions of article twenty-eight of this chapter and this article.

e. That all income and earnings of the company shall be used exclusively for its corporate purposes.

f. That no part of the net income or net earnings of the company shall inure to the benefit or profit of any private individual, firm or corporation.

2. Notwithstanding the provisions of any other law or requirement to

the contrary, limited-profit nursing home companies shall be incorporated and organized pursuant to this article.

A limited-profit nursing home company may be created by three or more persons, approved by the commissioner, by making, subscribing, acknowledging and filing with the secretary of state a certificate which shall state, in addition to those matters required to be set forth in such certificate by the business corporation law to the extent that such law is not inconsistent with this article:

a. That among the purposes for which it is formed, the company is to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate one or more nursing home projects pursuant to this article.

b. The number of directors, which shall not be less than three nor more than thirty-five and who shall be elected by the shareholders of the company. One additional director, who shall not be a shareholder and who need not meet other qualifications which may be prescribed by the certificate of incorporation or the by-laws, may be designated by the commissioner. In the absence of fraud or bad faith, the director appointed by the commissioner shall not be personally liable for the debts, obligations or liabilities of the company.

c. That the real property of the company shall not be sold, transferred, encumbered or assigned except as permitted by the provisions of this article.

d. That the company has been organized to serve a public purpose and that it shall be and remain subject to the supervision and control of the commissioner pursuant to the provisions of article twenty-eight of this chapter and this article; that so long as this article remains applicable to any project of the company, all real and personal property acquired by it, and all structures erected or rehabilitated by it, shall be deemed to be acquired, rehabilitated or created for the proper effectuation of the purposes of this article, and that the directors and shareholders or debenture holders of such company shall be deemed to

have agreed that they shall at no time receive or accept from such company in repayment of their investment in its shares or debentures any sums in excess of the par value of the share or debentures, together with such dividends, interest or other compensation as are prescribed by or permitted under this article, and that, upon dissolution of the company, any surplus remaining after the payment of all its obligations shall be distributed and disposed of and title to the property may be conveyed in fee, only as prescribed by this article.

e. That the entire amount to be paid in cash or property by the shareholders and debenture holders shall be at least five percentum of the project cost.

f. That in the event of a violation by a company of any provision of the certificate of incorporation or of law or of the loan or mortgage contract or any order of the commissioner or of any rules and regulations duly promulgated pursuant to the provisions of this chapter, the commissioner may remove any or all of the existing directors of the company and appoint such person or persons whom the commissioner deems advisable, including officers and employees of the department, as new directors to serve in the places of those removed; that directors so appointed by the commissioner who are officers or employees of the department shall serve in such capacity without compensation; and that any directors so appointed by the commissioner shall serve only for a period coexistent with the duration of such violation or until the commissioner is assured in a manner satisfactory to him against violations of a similar nature.

The provisions of section thirty-five-a of the social services law shall not be applicable to a limited-profit nursing home company, notwithstanding any contrary provisions contained therein.