



*Florida Department of State  
Division of Corporations*

# *Florida Business Corporations Act*

## **FOREWORD**

The Division of Corporations of the Florida Department of State produces this booklet specifically for the convenience of those who frequently refer to Chapter 607, Florida Statutes. Also included are excerpts from Chapter 213, F.S., regarding information sharing and Chapter 621, F.S., regarding Professional Service Corporations. All history notes commonly found in the Florida Statutes have been omitted. This booklet is not an official published version of the Florida Statutes and is not intended to be considered as such.

You will also find some basic filing forms, fee schedules and a Division telephone directory. A summary of requirements for filing a sub-chapter S corporation with the Internal Revenue Service is provided for your convenience. Other forms are available from the Division's website. We hope this publication will be helpful to you when filing with the Division of Corporations.

Division of Corporations

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**607.0102 Reservation of power to amend or repeal.**—The Legislature has power to amend or repeal all or part of this act at any time, and all domestic and foreign corporations subject to this act shall be governed by the amendment or repeal.

**607.0120 Filing requirements.**—

(1) A document must satisfy the requirements of this section and of any other section that adds to or varies these requirements to be entitled to filing by the Department of State.

(2) This act must require or permit filing the document in the office of the Department of State.

(3) The document must contain the information required by this act. It may contain other information as well.

(4) The document must be typewritten or printed, or, if electronically transmitted, the document must be in a format that can be retrieved or reproduced in typewritten or printed form, and must be legible.

(5) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of status required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(6) The document must be executed:

(a) By a director of a domestic or foreign corporation, or by its president or by another of its officers;

(b) If directors or officers have not been selected or the corporation has not been formed, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(7) The person executing the document shall sign it and state beneath or opposite his or her signature his or her name and the capacity in which he or she signs. The document may, but need not, contain the corporate seal, an attestation, an acknowledgment, or a verification.

(8) If the Department of State has prescribed a mandatory form for the document under s. 607.0121, the document must be in or on the prescribed form.

(9) The document must be delivered to the office of the Department of State for filing. Delivery may be made by electronic transmission if and to the extent permitted by the Department of State. If it is filed in typewritten or printed form and not transmitted electronically, the Department of State may require one exact or conformed copy, to be delivered with the document, (except as provided in s. 607.1509).

(10) When the document is delivered to the Department of State for filing, the correct filing fee, and any other tax, license fee, or penalty required to be paid by this act or other law shall be paid or provision for payment made in a manner permitted by the Department of State.

**607.0121 Forms.**—

(1) The Department of State may prescribe and furnish on request forms for:

(a) An application for certificate of status,

(b) A foreign corporation's application for certificate of authority to transact business in the state,

(c) A foreign corporation's application for certificate of withdrawal, and

(d) The annual report, for which the department may prescribe the use of the uniform business report, pursuant to s. 606.06.

If the Department of State so requires, the use of these forms shall be mandatory.

(2) The Department of State may prescribe and furnish on request forms for other documents required or permitted to be filed by this act, but their use shall not be mandatory.

**607.0122 Fees for filing documents and issuing certificates.**—The Department of State shall collect the following fees when the documents described in this section are delivered to the department for filing:

(1) Articles of incorporation: \$35.

(2) Application for registered name: \$87.50.

(3) Application for renewal of registered name: \$87.50.

(4) Corporation's statement of change of registered agent or registered office or both if not included on the annual report: \$35.

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- (5) Designation of and acceptance by registered agent: \$35.
- (6) Agent's statement of resignation from active corporation: \$87.50.
- (7) Agent's statement of resignation from an inactive corporation: \$35.
- (8) Amendment of articles of incorporation: \$35.
- (9) Restatement of articles of incorporation with amendment of articles: \$35.
- (10) Articles of merger or share exchange for each party thereto: \$35.
- (11) Articles of dissolution: \$35.
- (12) Articles of revocation of dissolution: \$35.
- (13) Application for reinstatement following administrative dissolution: \$600.
- (14) Application for certificate of authority to transact business in this state by a foreign corporation: \$35.
- (15) Application for amended certificate of authority: \$35.
- (16) Application for certificate of withdrawal by a foreign corporation: \$35.
- (17) Annual report: \$61.25.
- (18) Articles of correction: \$35.
- (19) Application for certificate of status: \$8.75.
- (20) Certificate of domestication of a foreign corporation: \$50.
- (21) Certified copy of document: \$52.50.
- (22) Serving as agent for substitute service of process: \$87.50.
- (23) Supplemental corporate fee: \$88.75.
- (24) Any other document required or permitted to be filed by this act: \$35.

**607.0123 Effective time and date of document.—**

- (1) Except as provided in subsections (2) and (4) and in s. 607.0124(3), a document accepted for filing is effective on the date and at the time of filing, as evidenced by such means as the Department of State may use for the purpose of recording the date and time of filing.
- (2) A document may specify a delayed effective date and, if desired, a time on that date, and if it does the document shall become effective on the date and at the time, if any, specified. If a delayed effective date is specified without specifying a time

on that date, the document shall become effective at the start of business on that date. Unless otherwise permitted by this act, a delayed effective date for a document may not be later than the 90th day after the date on which it is filed.

(3) If a document is determined by the Department of State to be incomplete and inappropriate for filing, the Department of State may return the document to the person or corporation filing it, together with a brief written explanation of the reason for the refusal to file, in accordance with s. 607.0125(3). If the applicant returns the document with corrections in accordance with the rules of the department within 60 days after it was mailed to the applicant by the department and if at the time of return the applicant so requests in writing, the filing date of the document will be the filing date that would have been applied had the original document not been deficient, except as to persons who relied on the record before correction and were adversely affected thereby.

(4) Corporate existence may predate the filing date, pursuant to s. 607.0203(1).

**607.0124 Correcting filed document.—**

(1) A domestic or foreign corporation may correct a document filed by the Department of State within 30 days after filing if the document:

- (a) Contains an inaccuracy;
- (b) Was defectively executed, attested, sealed, verified, or acknowledged; or
- (c) The electronic transmission was defective.

(2) A document is corrected:

- (a) By preparing articles of correction that:
  - 1. Describe the document (including its filing date);
  - 2. Specify the inaccuracy or defect to be corrected; and
  - 3. Correct the inaccuracy or defect; and
- (b) By delivering the articles of correction to the Department of State for filing, executed in accordance with s. 607.0120.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those

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persons, articles of correction are effective when filed.

**607.0125 Filing duties of Department of State.—**

- (1) If a document delivered to the Department of State for filing satisfies the requirements of s. 607.0120, the Department of State shall file it.
- (2) The Department of State files a document by recording it as filed on the date of receipt. After filing a document, the Department of State shall deliver an acknowledgment or certified copy to the domestic or foreign corporation or its representative.
- (3) If the Department of State refuses to file a document, it shall return it to the domestic or foreign corporation or its representative within 15 days after the document was received for filing, together with a brief, written explanation of the reason for refusal.
- (4) The Department of State's duty to file documents under this section is ministerial. The filing or refusing to file a document does not:
  - (a) Affect the validity or invalidity of the document in whole or part;
  - (b) Relate to the correctness or incorrectness of information contained in the document;
  - (c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.
- (5) If not otherwise provided by law and the provisions of this act, the Department of State shall determine, by rule, the appropriate format for, number of copies of, manner of execution of, method of electronic transmission of, and amount of and method of payment of fees for, any document placed under its jurisdiction.

**607.0126 Appeal from Department of State's refusal to file document.—**If the Department of State refuses to file a document delivered to its office for filing, within 30 days after return of the document by the department by mail, as evidenced by the postmark, the domestic or foreign corporation may:

- (1) Appeal the refusal pursuant to s. 120.68; or

- (2) Appeal the refusal to the circuit court of the county where the corporation's principal office (or, if none in this state, its registered office) is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Department of State's explanation of its refusal to file. The matter shall promptly be tried de novo by the court without a jury. The court may summarily order the Department of State to file the document or take other action the court considers appropriate. The court's final decision may be appealed as in other civil proceedings.

**607.0127 Evidentiary effect of copy of filed document.—**A certificate from the Department of State delivered with a copy of a document filed by the Department of State is conclusive evidence that the original document is on file with the department. History.—s. 10, ch. 89-154; s. 17, ch. 99-218.

**607.0128 Certificate of status.—**

- (1) Anyone may apply to the Department of State to furnish a certificate of status for a domestic corporation or a certificate of authorization for a foreign corporation.
- (2) A certificate of status or authorization sets forth:
  - (a) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state;
  - (b)1. That the domestic corporation is duly incorporated under the law of this state and the date of its incorporation, or
  - 2. That the foreign corporation is authorized to transact business in this state;
  - (c) That all fees and penalties owed to the department have been paid, if:
    - 1. Payment is reflected in the records of the department, and
    - 2. Nonpayment affects the existence or authorization of the domestic or foreign corporation;
  - (d) That its most recent annual report required by s. 607.1622 has been delivered to the department; and
  - (e) That articles of dissolution have not been filed.

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(3) Subject to any qualification stated in the certificate, a certificate of status or authorization issued by the department may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

### **607.0130 Powers of Department of State.—**

(1) The Department of State may propound to any corporation subject to the provisions of this act, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable it to ascertain whether the corporation has complied with all applicable provisions of this act. Such interrogatories must be answered within 30 days after mailing or within such additional time as fixed by the department.

Answers to interrogatories must be full and complete, in writing, and under oath. Interrogatories directed to an individual must be answered by the individual, and interrogatories directed to a corporation must be answered by the president, vice president, secretary, or assistant secretary.

(2) The Department of State is not required to file any document:

(a) To which interrogatories, as propounded pursuant to subsection (1), relate, until the interrogatories are answered in full;

(b) When interrogatories or other relevant evidence discloses that such document is not in conformity with the provisions of this act; or

(c) When the department has determined that the parties to such document have not paid all fees, taxes, and penalties due and owing this state.

(3) The Department of State may, based upon its findings hereunder or as provided in s. 213.053(15), bring an action in circuit court to collect any penalties, fees, or taxes determined to be due and owing the state and to compel any filing, qualification, or registration required by law. In connection with such proceeding the department may, without prior approval by the court, file a lis pendens against any property owned by the corporation and may further certify any findings to the Department of Legal Affairs for the initiation of any action permitted pursuant to s. 607.0505 which

the Department of Legal Affairs may deem appropriate.

(4) The Department of State shall have the power and authority reasonably necessary to enable it to administer this act efficiently, to perform the duties herein imposed upon it, and to promulgate reasonable rules necessary to carry out its duties and functions under this act.

**607.01401 Definitions.—**As used in this act, unless the context otherwise requires, the term:

(1) “Articles of incorporation” includes original, amended, and restated articles of incorporation, articles of share exchange, and articles of merger, and all amendments thereto.

(2) “Authorized shares” means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) “Business day” means Monday through Friday, excluding any day a national banking association is not open for normal business transactions.

(4) “Conspicuous” means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics, boldface, or a contrasting color or typing in capitals or underlined is conspicuous.

(5) “Corporation” or “domestic corporation” means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this act.

(6) “Day” means a calendar day.

(7) “Deliver” or “delivery” means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission.

(8) “Distribution” means a direct or indirect transfer of money or other property (except its own shares) or incurrance of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(9) “Electronic transmission” or “electronically transmitted” means any process of communication

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not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient. For purposes of proxy voting in accordance with ss. 607.0721, 607.0722, and 607.0724, the term includes, but is not limited to, telegrams, cablegrams, telephone transmissions, and transmissions through the Internet.

(10) "Employee" includes an officer but not a director. A director may accept duties that make him or her also an employee.

(11) "Entity" includes corporation and foreign corporation; unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign governments.

(12) "Foreign corporation" means a corporation for profit incorporated under laws other than the laws of this state.

(13) "Governmental subdivision" includes authority, county, district, and municipality.

(14) "Includes" denotes a partial definition.

(15) "Individual" includes the estate of an incompetent or deceased individual.

(16) "Insolvent" means the inability of a corporation to pay its debts as they become due in the usual course of its business.

(17) "Mail" means the United States mail, facsimile transmissions, and private mail carriers handling nationwide mail services.

(18) "Means" denotes an exhaustive definition.

(19) "Person" includes individual and entity.

(20) "Principal office" means the office (in or out of this state) where the principal executive offices of a domestic or foreign corporation are located as designated in the articles of incorporation or other initial filing until an annual report has been filed, and thereafter as designated in the annual report.

(21) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

(22) "Record date" means the date on which a corporation determines the identity of its shareholders and their share holdings for purposes of this act. The determination shall be made as of the close of the business on the record date unless another time is fixed.

(23) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under s. 607.08401 for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(24) "Shareholder" or "stockholder" means one who is a holder of record of shares in a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(25) "Shares" means the units into which the proprietary interests in a corporation are divided.

(26) "Sign" or "signature" means any symbol, manual, facsimile, conformed, or electronic signature adopted by a person with the intent to authenticate a document.

(27) "State," when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory and insular possession (and their agencies and governmental subdivisions) of the United States.

(28) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(29) "Treasury shares" means shares of a corporation that belong to the issuing corporation, which shares are authorized and issued shares that are not outstanding, are not canceled, and have not been restored to the status of authorized but unissued shares.

(30) "United States" includes district, authority, bureau, commission, department, and any other agency of the United States.

(31) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this act are entitled to vote and be counted together collectively on a matter at the meeting of shareholders. All shares entitled by the articles of incorporation or this act to vote generally on the matter are for that purpose a single voting group.

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**607.0141 Notice.—**

(1) Notice under this act must be in writing, unless oral notice is:

- (a) Expressly authorized by the articles of incorporation or the bylaws, and
- (b) Reasonable under the circumstances.

Notice by electronic transmission is written notice.

(2) Notice may be communicated in person; by telephone, voice mail (where oral notice is permitted), or other electronic means; or by mail or other method of delivery.

(3)(a) Written notice by a domestic or foreign corporation authorized to transact business in this state to its shareholder, if in a comprehensible form, is effective:

- 1. Upon deposit into the United States mail, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders; or
- 2. When electronically transmitted to the shareholder in a manner authorized by the shareholder.

(b) Unless otherwise provided in the articles of incorporation or bylaws, and without limiting the manner by which notice otherwise may be given effectively to shareholders, any notice to shareholders given by the corporation under any provision of this chapter, the articles of incorporation, or the bylaws shall be effective if given by a single written notice to shareholders who share an address if consented to by the shareholders at that address to whom such notice is given. Any such consent shall be revocable by a shareholder by written notice to the corporation.

(c) Any shareholder who fails to object in writing to the corporation, within 60 days after having been given written notice by the corporation of its intention to send the single notice permitted under paragraph (b), shall be deemed to have consented to receiving such single written notice.

(d) This subsection shall not apply to s. 607.0620, s. 607.1402, or s. 607.1404.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed:

- (a) To its registered agent at its registered office; or

(b) To the corporation or its secretary at its principal office or electronic mail address as authorized and shown in its most recent annual report or, in the case of a corporation that has not yet delivered an annual report, in a domestic corporation's articles of incorporation or in a foreign corporation's application for certificate of authority.

(5) Except as provided in subsection (3) or elsewhere in this act, written notice, if in a comprehensible form, is effective at the earliest date of the following:

- (a) When received;
- (b) Five days after its deposit in the United States mail, if mailed postpaid and correctly addressed; or
- (c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if communicated directly to the person to be notified in a comprehensible manner.

(7) If this act prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not less stringent than the requirements of this section or other provisions of this act, those requirements govern.

**607.0201 Incorporators.—**One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Department of State for filing.

**607.0202 Articles of incorporation; content.—**

(1) The articles of incorporation must set forth:

- (a) A corporate name for the corporation that satisfies the requirements of s. 607.0401;
- (b) The street address of the initial principal office and, if different, the mailing address of the corporation;
- (c) The number of shares the corporation is authorized to issue;
- (d) If any preemptive rights are to be granted to shareholders, the provision therefor;
- (e) The street address of the corporation's initial registered office and the name of its initial

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registered agent at that office together with a written acceptance as required in s. 607.0501(3); and

- (f) The name and address of each incorporator.
- (2) The articles of incorporation may set forth:
  - (a) The names and addresses of the individuals who are to serve as the initial directors;
  - (b) Provisions not inconsistent with law regarding:
    - 1. The purpose or purposes for which the corporation is organized;
    - 2. Managing the business and regulating the affairs of the corporation;
    - 3. Defining, limiting, and regulating the powers of the corporation and its board of directors and shareholders;
    - 4. A par value for authorized shares or classes of shares;
    - 5. The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions; and
  - (c) Any provision that under this act is required or permitted to be set forth in the bylaws.
- (3) The articles of incorporation need not set forth any of the corporate powers enumerated in this act.

### **607.0203 Incorporation.—**

- (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed or on a date specified in the articles of incorporation, if such date is within 5 business days prior to the date of filing.
- (2) The Department of State's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

### **607.0204 Liability for preincorporation**

**transactions.—**All persons purporting to act as or on behalf of a corporation, having actual knowledge that there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting except for any liability to any person who also had actual knowledge that there was no incorporation.

### **607.0205 Organizational meeting of directors.—**

- (1) After incorporation:
  - (a) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;
  - (b) If initial directors are not named in the articles, the incorporators shall hold an organizational meeting at the call of a majority of the incorporators:
    - 1. To elect directors and complete the organization of the corporation; or
    - 2. To elect a board of directors who shall complete the organization of the corporation.
- (2) Action required or permitted by this act to be taken by incorporators or directors at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator or director.
- (3) The directors or incorporators calling the organizational meeting shall give at least 3 days' notice thereof to each director or incorporator so named, stating the time and place of the meeting.
- (4) An organizational meeting may be held in or out of this state.

### **607.0206 Bylaws.—**

- (1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation unless that power is reserved to the shareholders by the articles of incorporation.
- (2) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

### **607.0207 Emergency bylaws.—**

- (1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (5). The emergency bylaws, which are subject to amendment

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or repeal by the shareholders, may make all provisions necessary for managing the corporation during an emergency, including:

- (a) Procedures for calling a meeting of the board of directors;
  - (b) Quorum requirements for the meeting; and
  - (c) Designation of additional or substitute directors.
- (2) The board of directors, either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during such emergency any or all officers or agents of the corporation are for any reason rendered incapable of discharging their duties.
- (3) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.
- (4) Corporate action taken in good faith in accordance with the emergency bylaws:
- (a) Binds the corporation; and
  - (b) May not be used to impose liability on a corporate director, officer, employee, or agent.
- (5) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

**607.0301 Purposes and application.—**

Corporations may be organized under this act for any lawful purpose or purposes, and the provisions of this act extend to all corporations, whether chartered by special acts or general laws, except that special statutes for the regulation and control of types of business and corporations shall control when in conflict herewith.

**607.0302 General powers.—**Unless its articles of incorporation provide otherwise, every corporation

has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power:

- (1) To sue and be sued, complain, and defend in its corporate name;

- (2) To have a corporate seal, which may be altered at will and to use it or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
- (3) To purchase, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property wherever located;
- (4) To sell, convey, mortgage, pledge, create a security interest in, lease, exchange, and otherwise dispose of all or any part of its property;
- (5) To lend money to, and use its credit to assist, its officers and employees in accordance with s. 607.0833;
- (6) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;
- (7) To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the corporation), and secure any of its obligations by mortgage or pledge of any of its property, franchises, and income and make contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion, or attainment of the business of a corporation the majority of the outstanding stock of which is owned, directly or indirectly, by the contracting corporation; a corporation which owns, directly or indirectly, a majority of the outstanding stock of the contracting corporation; or a corporation the majority of the outstanding stock of which is owned, directly or indirectly, by a corporation which owns, directly or indirectly, the majority of the outstanding stock of the contracting corporation, which contracts of guaranty and suretyship shall be deemed to be necessary or convenient to the conduct, promotion, or attainment of the business of the contracting corporation, and make other contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion, or attainment of the business of the contracting corporation;

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- (8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (9) To conduct its business, locate offices, and exercise the powers granted by this act within or without this state;
- (10) To elect directors and appoint officers, employees, and agents of the corporation and define their duties, fix their compensation, and lend them money and credit;
- (11) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;
- (12) To make donations for the public welfare or for charitable, scientific, or educational purposes;
- (13) To transact any lawful business that will aid governmental policy;
- (14) To make payments or donations or do any other act not inconsistent with law that furthers the business and affairs of the corporation;
- (15) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents and for any or all of the current or former directors, officers, employees, and agents of its subsidiaries;
- (16) To provide insurance for its benefit on the life of any of its directors, officers, or employees, or on the life of any shareholder for the purpose of acquiring at his or her death shares of its stock owned by the shareholder or by the spouse or children of the shareholder; and
- (17) To be a promoter, incorporator, partner, member, associate, or manager of any corporation, partnership, joint venture, trust, or other entity.

**607.0303 Emergency powers.—**

- (1) In anticipation of or during any emergency defined in subsection (5), the board of directors of a corporation may:
  - (a) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

- (b) Relocate the principal office or designate alternative principal offices or regional offices or authorize the officers to do so.
- (2) During an emergency defined in subsection (5), unless emergency bylaws provide otherwise:
  - (a) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio;
  - (b) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum; and
  - (c) The director or directors in attendance at a meeting, or any greater number affixed by the emergency bylaws, constitute a quorum.
- (3) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:
  - (a) Binds the corporation; and
  - (b) May not be used to impose liability on a corporate director, officer, employee, or agent.
- (4) No officer, director, or employee acting in accordance with any emergency bylaws shall be liable except for willful misconduct.
- (5) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.
- (6) To the extent not inconsistent with any emergency bylaws so adopted, the bylaws of the corporation shall remain in effect during any emergency, and upon termination of the emergency, the emergency bylaws will cease to be operative.

**607.0304 Ultra vires.—**

- (1) Except as provided in subsection (2), the validity of corporate action, including, but not limited to, any conveyance, transfer, or encumbrance of real or personal property to or by a corporation, may not be challenged on the ground that the corporation lacks or lacked power to act.
- (2) A corporation's power to act may be challenged:

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- (a) In a proceeding by a shareholder against the corporation to enjoin the act;
  - (b) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against an incumbent or former officer, employee, or agent of the corporation; or
  - (c) In a proceeding by the Attorney General, as provided in this act, to dissolve the corporation or in a proceeding by the Attorney General to enjoin the corporation from the transaction of unauthorized business.
- (3) In a shareholder's proceeding under paragraph (2)(a) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered by the corporation or another party because of enjoining the unauthorized act.

**607.0401 Corporate name.**—A corporate name:

- (1) Must contain the word “corporation,” “company,” or “incorporated” or the abbreviation “Corp.,” “Inc.,” or “Co.,” or the designation “Corp.,” “Inc.,” or “Co.,” as will clearly indicate that it is a corporation instead of a natural person, partnership, or other business entity;
- (2) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted in this act and its articles of incorporation;
- (3) May not contain language stating or implying that the corporation is connected with a state or federal government agency or a corporation chartered under the laws of the United States; and
- (4) Must be distinguishable from the names of all other entities or filings, except fictitious name registrations pursuant to s. 865.09, organized, registered, or reserved under the laws of this state, which names are on file with the Division of Corporations.
- (5) The name of the corporation as filed with the Department of State shall be for public notice only and shall not alone create any presumption of ownership beyond that which is created under the common law.

**607.0403 Registered name; application; renewal; revocation.**—

- (1) A foreign corporation may register its corporate name, or its corporate name with any addition required by s. 607.1506, if the name is distinguishable upon the records of the Department of State from the corporate names that are not available under s. 607.0401(4).
- (2) A foreign corporation registers its corporate name, or its corporate name with any addition required by s. 607.1506, by delivering to the Department of State for filing an application:
  - (a) Setting forth its corporate name, or its corporate name with any addition required by s. 607.1506, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and
  - (b) Accompanied by a certificate of existence, or a certificate setting forth that such corporation is in good standing under the laws of the state or country wherein it is organized (or a document of similar import), from the state or country of incorporation.
- (3) The name is registered for the applicant's exclusive use upon the effective date of the application and shall be effective until the close of the calendar year in which the application for registration is filed.
- (4) A foreign corporation the registration of which is effective may renew it from year to year by annually filing a renewal application which complies with the requirements of subsection (2) between October 1 and December 31 of the preceding year. The renewal application when filed renews the registration for the following calendar year.
- (5) A foreign corporation the registration of which is effective may thereafter qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under this act or by another foreign corporation thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

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(6) The Department of State may revoke any registration if, after a hearing, it finds that the application therefor or any renewal thereof was not made in good faith.

**607.0501 Registered office and registered agent.—**

- (1) Each corporation shall have and continuously maintain in this state:
- (a) A registered office which may be the same as its place of business; and
  - (b) A registered agent, who may be either:
    - 1. An individual who resides in this state whose business office is identical with such registered office;
    - 2. Another corporation or not-for-profit corporation as defined in chapter 617, authorized to transact business or conduct its affairs in this state, having a business office identical with the registered office; or
    - 3. A foreign corporation or not-for-profit foreign corporation authorized pursuant to this chapter or chapter 617 to transact business or conduct its affairs in this state, having a business office identical with the registered office.
- (2) This section does not apply to corporations which are required by law to designate the Chief Financial Officer as their attorney for the service of process, associations subject to the provisions of chapter 665, and banks and trust companies subject to the provisions of the financial institutions codes.
- (3) A registered agent appointed pursuant to this section or a successor registered agent appointed pursuant to s. 607.0502 on whom process may be served shall each file a statement in writing with the Department of State, in such form and manner as shall be prescribed by the department, accepting the appointment as a registered agent simultaneously with his or her being designated. Such statement of acceptance shall state that the registered agent is familiar with, and accepts, the obligations of that position.
- (4) The Department of State shall maintain an accurate record of the registered agents and registered offices for the service of process and shall furnish any information disclosed thereby promptly upon request and payment of the required fee.

(5) A corporation may not maintain any action in a court in this state until the corporation complies with the provisions of this section or s. 607.1507, as applicable, and pays to the Department of State a penalty of \$5 for each day it has failed to so comply or \$500, whichever is less.

**607.0502 Change of registered office or registered agent; resignation of registered agent.—**

- (1) A corporation may change its registered office or its registered agent upon filing with the Department of State a statement of change setting forth:
- (a) The name of the corporation;
  - (b) The street address of its current registered office;
  - (c) If the current registered office is to be changed, the street address of the new registered office;
  - (d) The name of its current registered agent;
  - (e) If its current registered agent is to be changed, the name of the new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment;
  - (f) That the street address of its registered office and the street address of the business office of its registered agent, as changed, will be identical;
  - (g) That such change was authorized by resolution duly adopted by its board of directors or by an officer of the corporation so authorized by the board of directors.
- (2) Any registered agent may resign his or her agency appointment by signing and delivering for filing with the Department of State a statement of resignation and mailing a copy of such statement to the corporation at its principal office address shown in its most recent annual report or, if none, filed in the articles of incorporation or other most recently filed document. The statement of resignation shall state that a copy of such statement has been mailed to the corporation at the address so stated. The agency is terminated as of the 31st day after the date on which the statement was filed and unless otherwise provided in the statement, termination of the agency acts as a termination of the registered office.

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(3) If a registered agent changes his or her business name or business address, he or she may change such name or address and the address of the registered office of any corporation for which he or she is the registered agent by:

- (a) Notifying all such corporations in writing of the change,
  - (b) Signing (either manually or in facsimile) and delivering to the Department of State for filing a statement that substantially complies with the requirements of paragraphs (1)(a)-(f), setting forth the names of all such corporations represented by the registered agent, and
  - (c) Reciting that each corporation has been notified of the change.
- (4) Changes of the registered office or registered agent may be made by a change on the corporation's annual report form filed with the Department of State.
- (5) The Department of State shall collect a fee pursuant to s. 15.09(2) for the filings authorized under this section.

### **607.0504 Service of process, notice, or demand on a corporation.—**

- (1) Process against any corporation may be served in accordance with chapter 48 or chapter 49.
- (2) Any notice to or demand on a corporation under this act may be made to the chair of the board, the president, any vice president, the secretary, or the treasurer; to the registered agent of the corporation at the registered office of the corporation in this state; or to any other address in this state that is in fact the principal office of the corporation in this state.
- (3) This section does not prescribe the only means, or necessarily the required means, of serving notice or demand on a corporation.

### **607.0505 Registered agent; duties.—**

- (1)(a) Each corporation, foreign corporation, or alien business organization that owns real property located in this state, that owns a mortgage on real property located in this state, or that transacts business in this state shall have and continuously maintain in this state a registered office and a registered agent and shall file with the Department

of State notice of the registered office and registered agent as provided in ss. 607.0501 and 607.0502. The appointment of a registered agent in compliance with s. 607.0501 or s. 607.1507 is sufficient for purposes of this section provided the registered agent so appointed files, in such form and manner as prescribed by the Department of State, an acceptance of the obligations provided for in this section.

(b) Each such corporation, foreign corporation, or alien business organization which fails to have and continuously maintain a registered office and a registered agent as required in this section will be liable to this state for \$500 for each year, or part of a year, during which the corporation, foreign corporation, or alien business organization fails to comply with these requirements; but such liability will be forgiven in full upon the compliance by the corporation, foreign corporation, or alien business organization with the requirements of this subsection, even if such compliance occurs after an action to collect such liability is instituted. The Department of Legal Affairs may file an action in the circuit court for the judicial circuit in which the corporation, foreign corporation, or alien business organization is found or transacts business, or in which real property belonging to the corporation, foreign corporation, or alien business organization is located, to petition the court for an order directing that a registered agent be appointed and that a registered office be designated, and to obtain judgment for the amount owed under this subsection. In connection with such proceeding, the department may, without prior approval by the court, file a lis pendens against real property owned by the corporation, foreign corporation, or alien business organization, which lis pendens shall set forth the legal description of the real property and shall be filed in the public records of the county where the real property is located. If the lis pendens is filed in any county other than the county in which the action is pending, the lis pendens which is filed must be a certified copy of the original lis pendens. The failure to comply timely or fully with an order directing that a registered agent be appointed and that a registered office be designated will result in a civil penalty of not more than \$1,000 for each day

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of noncompliance. A judgment or an order of payment entered pursuant to this subsection will become a judgment lien against any real property owned by the corporation, foreign corporation, or alien business organization when a certified copy of the judgment or order is recorded as required by s. 55.10. The department will be able to avail itself of, and is entitled to use, any provision of law or of the Florida Rules of Civil Procedure to further the collecting or obtaining of payment pursuant to a judgment or order of payment. The state, through the Attorney General, may bid, at any judicial sale to enforce its judgment lien, any amount up to the amount of the judgment or lien obtained pursuant to this subsection. All moneys recovered under this subsection shall be treated as forfeitures under ss. 895.01-895.09 and used or distributed in accordance with the procedure set forth in s. 895.09. A corporation, foreign corporation, or alien business organization which fails to have and continuously maintain a registered office and a registered agent as required in this section may not defend itself against any action instituted by the Department of Legal Affairs or by any other agency of this state until the requirements of this subsection have been met.

(2) Each corporation, foreign corporation, or alien business organization that owns real property located in this state, that owns a mortgage on real property located in this state, or that transacts business in this state shall, pursuant to subpoena served upon the registered agent of the corporation, foreign corporation, or alien business organization issued by the Department of Legal Affairs, produce, through its registered agent or through a designated representative within 30 days after service of the subpoena, testimony and records reflecting the following:

(a) True copies of documents evidencing the legal existence of the entity, including the articles of incorporation and any amendments to the articles of incorporation or the legal equivalent of the articles of incorporation and such amendments.

(b) The names and addresses of each current officer and director of the entity or persons holding equivalent positions.

(c) The names and addresses of all prior officers and directors of the entity or persons holding

equivalent positions, for a period not to exceed the 5 years previous to the date of issuance of the subpoena.

(d) The names and addresses of each current shareholder, equivalent equitable owner, and ultimate equitable owner of the entity, the number of which names is limited to the names of the 100 shareholders, equivalent equitable owners, and ultimate equitable owners that, in comparison to all other shareholders, equivalent equitable owners, or ultimate equitable owners, respectively, own the largest number of shares of stock of the corporation, foreign corporation, or alien business organization or the largest percentage of an equivalent form of equitable ownership of the corporation, foreign corporation, or alien business organization.

(e) The names and addresses of all prior shareholders, equivalent equitable owners, and ultimate equitable owners of the entity for the 12-month period preceding the date of issuance of the subpoena, the number of which names is limited to the 100 shareholders, equivalent equitable owners, and ultimate equitable owners that, in comparison to all other shareholders, equivalent equitable owners, or ultimate equitable owners, respectively, own the largest number of shares of stock of the corporation, foreign corporation, or alien business organization or the largest percentage of an equivalent form of equitable ownership of the corporation, foreign corporation, or alien business organization.

(f) The names and addresses of the person or persons who provided the records and information to the registered agent or designated representative of the entity.

(g) The requirements of paragraphs (d) and (e) do not apply to:

1. A financial institution;
2. A corporation, foreign corporation, or alien business organization the securities of which are registered pursuant to s. 12 of the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a-78kk, if such corporation, foreign corporation, or alien business organization files with the United States Securities and Exchange Commission the reports required by s. 13 of that act; or
3. A corporation, foreign corporation, or alien business organization, the securities of which are

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regularly traded on an established securities market located in the United States or on an established securities market located outside the United States, if such non-United States securities market is designated by rule adopted by the Department of Legal Affairs;

upon a showing by the corporation, foreign corporation, or alien business organization that the exception in subparagraph 1., subparagraph 2., or subparagraph 3. applies to the corporation, foreign corporation, or alien business organization. Such exception in subparagraph 1., subparagraph 2., or subparagraph 3. does not, however, exempt the corporation, foreign corporation, or alien business organization from the requirements for producing records, information, or testimony otherwise imposed under this section for any period of time when the requisite conditions for the exception did not exist.

(3) The time limit for producing records and testimony may be extended for good cause shown by the corporation, foreign corporation, or alien business organization.

(4) A person, corporation, foreign corporation, or alien business organization designating an attorney, accountant, or spouse as a registered agent or designated representative shall, with respect to this state or any agency or subdivision of this state, be deemed to have waived any privilege that might otherwise attach to communications with respect to the information required to be produced pursuant to subsection (2), which communications are among such corporation, foreign corporation, or alien business organization; the registered agent or designated representative of such corporation, foreign corporation, or alien business organization; and the beneficial owners of such corporation, foreign corporation, or alien business organization. The duty to comply with the provisions of this section will not be excused by virtue of any privilege or provision of law of this state or any other state or country, which privilege or provision authorizes or directs that the testimony or records required to be produced under subsection (2) are privileged or confidential or otherwise may not be disclosed.

(5) If a corporation, foreign corporation, or alien business organization fails without lawful excuse to comply timely or fully with a subpoena issued pursuant to subsection (2), the Department of Legal Affairs may file an action in the circuit court for the judicial circuit in which the corporation, foreign corporation, or alien business organization is found or transacts business or in which real property belonging to the corporation, foreign corporation, or alien business organization is located, for an order compelling compliance with the subpoena. The failure without a lawful excuse to comply timely or fully with an order compelling compliance with the subpoena will result in a civil penalty of not more than \$1,000 for each day of noncompliance with the order. In connection with such proceeding, the department may, without prior approval by the court, file a lis pendens against real property owned by the corporation, foreign corporation, or alien business organization, which lis pendens shall set forth the legal description of the real property and shall be filed in the public records of the county where the real property is located. If the lis pendens is filed in any county other than the county in which the action is pending, the lis pendens which is filed must be a certified copy of the original lis pendens. A judgment or an order of payment entered pursuant to this subsection will become a judgment lien against any real property owned by the corporation, foreign corporation, or alien business organization when a certified copy of the judgment or order is recorded as required by s. 55.10. The department will be able to avail itself of, and is entitled to use, any provision of law or of the Florida Rules of Civil Procedure to further the collecting or obtaining of payment pursuant to a judgment or order of payment. The state, through the Attorney General, may bid, at any judicial sale to enforce its judgment lien, an amount up to the amount of the judgment or lien obtained pursuant to this subsection. All moneys recovered under this subsection shall be treated as forfeitures under ss. 895.01-895.09 and used or distributed in accordance with the procedure set forth in s. 895.09.

(6) Information provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to this section

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are confidential and exempt from the provisions of s. 119.07(1) while the investigation is active. For purposes of this section, an investigation shall be considered “active” while such investigation is being conducted with a reasonable, good faith belief that it may lead to the filing of an administrative, civil, or criminal proceeding. An investigation does not cease to be active so long as the department is proceeding with reasonable dispatch and there is a good faith belief that action may be initiated by the department or other administrative or law enforcement agency. Except for active criminal intelligence or criminal investigative information, as defined in s. 119.011, and information which, if disclosed, would reveal a trade secret, as defined in s. 688.002, or would jeopardize the safety of an individual, all information, records, and transcriptions become public record when the investigation is completed or ceases to be active. The department shall not disclose confidential information, records, or transcriptions of testimony except pursuant to the authorization by the Attorney General in any of the following circumstances:

- (a) To a law enforcement agency participating in or conducting a civil investigation under chapter 895, or participating in or conducting a criminal investigation.
- (b) In the course of filing, participating in, or conducting a judicial proceeding instituted pursuant to this section or chapter 895.
- (c) In the course of filing, participating in, or conducting a judicial proceeding to enforce an order or judgment entered pursuant to this section or chapter 895.
- (d) In the course of a criminal or civil proceeding.

A person or law enforcement agency which receives any information, record, or transcription of testimony that has been made confidential by this subsection shall maintain the confidentiality of such material and shall not disclose such information, record, or transcription of testimony except as provided for herein. Any person who willfully discloses any information, record, or transcription of testimony that has been made confidential by this subsection, except as provided for herein, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. If any

information, record, or testimony obtained pursuant to subsection (2) is offered in evidence in any judicial proceeding, the court may, in its discretion, seal that portion of the record to further the policies of confidentiality set forth herein.

(7) This section is supplemental and shall not be construed to preclude or limit the scope of evidence gathering or other permissible discovery pursuant to any other subpoena or discovery method authorized by law or rule of procedure.

(8) It is unlawful for any person, with respect to any record or testimony produced pursuant to a subpoena issued by the Department of Legal Affairs under subsection (2), to knowingly and willfully falsify, conceal, or cover up a material fact by a trick, scheme, or device; make any false, fictitious, or fraudulent statement or representation; or make or use any false writing or document knowing the writing or document to contain any false, fictitious, or fraudulent statement or entry. A person who violates this provision is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(9) In the absence of a written agreement to the contrary, a registered agent is not liable for the failure to give notice of the receipt of a subpoena under subsection (2) to the corporation, foreign corporation, or alien business organization which appointed such registered agent if such registered agent timely sends written notice of the receipt of such subpoena by first-class mail or domestic or international air mail, postage fees prepaid, to the last address that has been designated in writing to the registered agent by such appointing corporation, foreign corporation, or alien business organization.

(10) The designation of a registered agent and a registered office as required by subsection (1) for a corporation, foreign corporation, or alien business organization which owns real property in this state or a mortgage on real property in this state is solely for the purposes of this act; and, notwithstanding s. 48.181, s. 607.1502, s. 607.1503, or any other relevant section of the Florida Statutes, such designation shall not be used in determining whether the corporation, foreign corporation, or alien business organization is actually doing business in this state.

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(11) As used in this section, the term:

(a) “Alien business organization” means:

1. Any corporation, association, partnership, trust, joint stock company, or other entity organized under any laws other than the laws of the United States, of any United States territory or possession, or of any state of the United States; or
2. Any corporation, association, partnership, trust, joint stock company, or other entity or device 10 percent or more of which is owned or controlled, directly or indirectly, by an entity described in subparagraph 1. or by a foreign natural person.

(b) “Financial institution” means:

1. A bank, banking organization, or savings association, as defined in s. 220.62;
2. An insurance company, trust company, credit union, or industrial savings bank, any of which is licensed or regulated by an agency of the United States or any state of the United States; or
3. Any person licensed under part III of chapter 494.

(c) “Mortgage” means a mortgage on real property situated in this state, except a mortgage owned by a financial institution.

(d) “Real property” means any real property situated in this state or any interest in such real property.

(e) “Ultimate equitable owner” means a natural person who, directly or indirectly, owns or controls an ownership interest in a corporation, foreign corporation, or alien business organization, regardless of whether such natural person owns or controls such ownership interest through one or other natural persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities or devices, or any combination thereof.

(12) Any alien business organization may withdraw its registered agent designation by delivering an application for certificate of withdrawal to the Department of State for filing. Such application shall set forth:

(a) The name of the alien business organization and the jurisdiction under the law of which it is incorporated or organized.

(b) That it is no longer required to maintain a registered agent in this state.

**607.0601 Authorized shares.—**

(1) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and prior to the issuance of shares of a class the preferences, limitations, and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by s. 607.0602 or s. 607.0624.

(2) The articles of incorporation must authorize:

- (a) One or more classes of shares that together have unlimited voting rights, and
- (b) One or more classes of shares (which may be the same class or classes as those with voting rights) that together are entitled to receive the net assets of the corporation upon dissolution.

(3) The articles of incorporation may authorize one or more classes of shares that:

- (a) Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this act;
- (b) Are redeemable or convertible as specified in the articles of incorporation:

1. At the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event;
2. For cash, indebtedness, securities, or other property; or
3. In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(c) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative;

(d) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

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(4) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (3) is not exhaustive.

(5) Shares which are entitled to preference in the distribution of dividends or assets shall not be designated as common shares. Shares which are not entitled to preference in the distribution of dividends or assets shall be common shares and shall not be designated as preferred shares.

**607.0602 Terms of class or series determined by board of directors.—**

(1) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights (within the limits set forth in s. 607.0601) of:

(a) Any class of shares before the issuance of any shares of that class, or  
(b) One or more series within a class before the issuance of any shares of that series.

(2) Each series of a class must be given a distinguishing designation.

(3) All shares of a series must have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, of those of other series of the same class.

(4) Before issuing any shares of a class or series created under this section, the corporation must deliver to the Department of State for filing articles of amendment, which are effective without shareholder action, that set forth:

(a) The name of the corporation;  
(b) The text of the amendment determining the terms of the class or series of shares;  
(c) The date the amendment was adopted; and  
(d) A statement that the amendment was duly adopted by the board of directors.

**607.0603 Issued and outstanding shares.—**

(1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled, except as provided in s. 607.0631.

(2) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (3) and to s. 607.06401.

(3) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

**607.0604 Fractional shares.—**

(1) A corporation may:

(a) Issue fractions of a share or pay in money the fair value of fractions of a share;  
(b) Make arrangements, or provide reasonable opportunity, for any person entitled to or holding a fractional interest in a share to sell such fractional interest or to purchase such additional fractional interests as may be necessary to acquire a full share;  
(c) Issue scrip in registered or bearer form, over the manual or facsimile signature of an officer of the corporation or its agent, entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(2) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

(a) That the scrip will become void if not exchanged for full shares before a specified date; and  
(b) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripolders.

(3) Each certificate representing scrip must be conspicuously labeled “scrip” and must contain the information required by s. 607.0625.

(4) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(5) When a corporation is to pay in money the value of fractions of a share, the good faith judgment of the board of directors as to the fair value shall be conclusive.

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**607.0620 Subscriptions for shares.—**

- (1) A subscription for shares entered into before incorporation is irrevocable for 6 months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.
- (2) A subscription for shares, whether made before or after incorporation, is not enforceable unless in writing and signed by the subscriber.
- (3) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform as to all shares of the same class or series, unless the subscription agreement specifies otherwise.
- (4) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.
- (5) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than 20 days after the corporation sends written demand for payment to the subscriber. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his or her last post office address known to the corporation, with first-class postage thereon prepaid. The defaulting subscriber or his or her legal representative shall be entitled to be paid the excess of the sale proceeds over the sum of the amount due and unpaid on the subscription and the reasonable expenses incurred in selling the shares, but in no event shall the defaulting subscriber or his or her legal representative be entitled to be paid an amount greater than the amount paid by the subscriber on the subscription.

**607.0621 Issuance of shares.—**

- (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.
- (2) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, promises to perform services evidenced by a written contract, or other securities of the corporation.
- (3) Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable. When it cannot be determined that outstanding shares are fully paid and nonassessable, there shall be a conclusive presumption that such shares are fully paid and nonassessable if the board of directors makes a good faith determination that there is no substantial evidence that the full consideration for such shares has not been paid.
- (4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable. Consideration in the form of a promise to pay money or a promise to perform services is received by the corporation at the time of the making of the promise, unless the agreement specifically provides otherwise.
- (5) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits received. If the services are not performed, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

**607.0622 Liability for shares issued before payment.—**

- (1) A holder of, or subscriber to, shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or to be issued. Such an obligation may be enforced by the corporation and its successors or assigns; by a shareholder suing derivatively on behalf of the corporation; by a receiver, liquidator, or trustee in bankruptcy of the corporation; or by another person having the legal right to marshal the assets of such corporation.
- (2) Any person becoming an assignee or transferee of shares, or of a subscription for shares, in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration, but the assignor or transferor shall continue to be liable therefor.
- (3) No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder, but the pledgor or other person transferring such shares as collateral shall be considered the holder thereof for purposes of liability under this section.
- (4) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, receiver, or other fiduciary shall not be personally liable to the corporation as a holder of, or subscriber to, shares of a corporation, but the estate and funds in her or his hands shall be so liable.
- (5) No liability under this section may be asserted more than 5 years after the earlier of:
  - (a) The issuance of the stock, or
  - (b) The date of the subscription upon which the assessment is sought.

**607.0623 Share dividends.—**

- (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

- (2) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:
  - (a) The articles of incorporation so authorize,
  - (b) A majority of the votes entitled to be cast by the class or series to be issued approves the issue, or
  - (c) There are no outstanding shares of the class or series to be issued.
- (3) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

**607.0624 Share options.—**

- (1) Unless the articles of incorporation provide otherwise, a corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued.
- (2) The terms and conditions of stock rights and options which are created and issued by a corporation formed under this chapter, or its successor, and which entitle the holders thereof to purchase from the corporation shares of any class or classes, whether authorized but unissued shares, treasury shares, or shares to be purchased or acquired by the corporation, may include, without limitation, restrictions, or conditions that preclude or limit the exercise, transfer, receipt, or holding of such rights or options by any person or persons, including any person or persons owning or offering to acquire a specified number or percentage of the outstanding common shares or other securities of the corporation, or any transferee or transferees of any such person or persons, or that invalidate or void such rights or options held by any such person or persons or any such transferee or transferees.

**607.0625 Form and content of certificates.—**

- (1) Shares may but need not be represented by certificates. Unless this act or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

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- (2) At a minimum, each share certificate must state on its face:
- (a) The name of the issuing corporation and that the corporation is organized under the laws of this state;
  - (b) The name of the person to whom issued; and
  - (c) The number and class of shares and the designation of the series, if any, the certificate represents.
- (3) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series (and the authority of the board of directors to determine variations for future series) must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder a full statement of this information on request and without charge.
- (4) Each share certificate:
- (a) Must be signed (either manually or in facsimile) by an officer or officers designated in the bylaws or designated by the board of directors, and
  - (b) May bear the corporate seal or its facsimile.
- (5) If the person who signed (either manually or in facsimile) a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.
- (6) Nothing in this section may be construed to invalidate any share certificate validly issued and outstanding under the general corporation law on July 1, 1990.

**607.0626 Shares without certificates.—**

- (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.
- (2) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written

statement of the information required on certificates by s. 607.0625(2) and (3), and, if applicable, s. 607.0627.

**607.0627 Restriction on transfer of shares and other securities.—**

- (1) The articles of incorporation, the bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of such shares are parties to the restriction agreement or voted in favor of the restriction.
- (2) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by s. 607.0626(2). Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.
- (3) A restriction on the transfer or registration of transfer of shares is authorized:
- (a) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;
  - (b) To preserve exemptions under federal or state securities law; or
  - (c) For any other reasonable purpose.
- (4) A restriction on the transfer or registration of transfer of shares may:
- (a) Obligate the shareholder first to offer the corporation or other persons (separately, consecutively, or simultaneously) an opportunity to acquire the restricted shares;
  - (b) Obligate the corporation or other persons (separately, consecutively, or simultaneously) to acquire the restricted shares;
  - (c) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

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(d) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, “shares” includes a security convertible into or carrying a right to subscribe for or acquire shares.

**607.0628 Expenses of issue.**—A corporation may pay the expenses of selling or underwriting its shares and of organizing or reorganizing the corporation from the consideration received for shares.

**607.0630 Shareholders’ preemptive rights.**—

(1) The shareholders of a corporation do not have a preemptive right to acquire the corporation’s unissued shares or the corporation’s treasury shares, except in each case to the extent the articles of incorporation so provide.

(2) A statement included in the articles of incorporation that “the corporation elects to have preemptive rights” (or words of similar import) means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation’s unissued shares and treasury shares upon the decision of the board of directors to issue them.

(b) A shareholder may waive his or her preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(c) There is no preemptive right with respect to:

1. Shares issued as compensation to directors, officers, agents, or employees of the corporation or its subsidiaries or affiliates;
2. Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation or its subsidiaries or affiliates;

3. Shares authorized in articles of incorporation that are issued within 6 months from the effective date of incorporation;

4. Shares issued pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a law of this state or of the United States; or

5. Shares issued for consideration other than money.

(d) Holders of shares of any class or series without general voting rights but with preferential rights to distributions or net assets upon dissolution and liquidation have no preemptive rights with respect to shares of any class.

(e) Holders of shares of any class or series with general voting rights but without preferential rights to distributions or net assets upon dissolution or liquidation have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of 1 year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of 1 year is subject to the shareholders’ preemptive rights.

(3) For purposes of this section, “shares” includes a security convertible into or carrying a right to subscribe for or acquire shares.

(4) In the case of any corporation in existence prior to January 1, 1976, shareholders of such corporation shall continue to have the preemptive rights in such corporation which they had immediately prior to that date, unless and until the articles of incorporation are amended to alter or terminate shareholders’ preemptive rights.

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**607.0631 Corporation's acquisition of its own shares.—**

(1) A corporation may acquire its own shares, and, unless otherwise provided in the articles of incorporation or except as provided in subsection (4) or subsection (5), shares so acquired constitute authorized but unissued shares of the same class but undesignated as to series.

(2) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

(3) Articles of amendment may be adopted by the board of directors without shareholder action, shall be delivered to the Department of State for filing, and shall set forth:

- (a) The name of the corporation;
- (b) The reduction in the number of authorized shares, itemized by class and series; and
- (c) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

(4) Shares of a corporation in existence on June 30, 1990, which are treasury shares under s. 607.004(18), Florida Statutes (1987), shall be issued, but not outstanding, until canceled or disposed of by the corporation.

(5) A corporation that has shares of any class or series which are either registered on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., may acquire such shares and designate, either in the bylaws or in the resolutions of its board, that shares so acquired by the corporation shall constitute treasury shares.

**607.06401 Distributions to shareholders.—**

(1) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitations in subsection (3).

(2) If the board of directors does not fix the record date for determining shareholders entitled to a distribution (other than one involving a purchase, redemption, or other acquisition of the corporation's

shares), it is the date the board of directors authorizes the distribution.

(3) No distribution may be made if, after giving it effect:

- (a) The corporation would not be able to pay its debts as they become due in the usual course of business; or
- (b) The corporation's total assets would be less than the sum of its total liabilities plus (unless the articles of incorporation permit otherwise) the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(4) The board of directors may base a determination that a distribution is not prohibited under subsection (3) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances. In the case of any distribution based upon such a valuation, each such distribution shall be identified as a distribution based upon a current valuation of assets, and the amount per share paid on the basis of such valuation shall be disclosed to the shareholders concurrent with their receipt of the distribution.

(5) If the articles of incorporation of a corporation engaged in the business of exploiting natural resources or other wasting assets so provide, distributions may be paid in cash out of depletion or similar reserves; and each such distribution shall be identified as a distribution based upon such reserves, and the amount per share paid on the basis of such reserves shall be disclosed to the shareholders concurrent with their receipt of the distribution.

(6) Except as provided in subsection (8), the effect of a distribution under subsection (3) is measured:

(a) In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

- 1. The date money or other property is transferred or debt incurred by the corporation, or
- 2. The date the shareholder ceases to be a shareholder with respect to the acquired shares;

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(b) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed;

(c) In all other cases, as of:

1. The date the distribution is authorized if the payment occurs within 120 days after the date of authorization, or

2. The date the payment is made if it occurs more than 120 days after the date of authorization.

(7) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(8) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (3) if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

**607.0701 Annual meeting.—**

(1) A corporation shall hold a meeting of shareholders annually, for the election of directors and for the transaction of any proper business, at a time stated in or fixed in accordance with the bylaws.

(2) Annual shareholders' meetings may be held in or out of this state at a place stated in or fixed in accordance with the bylaws or, when not inconsistent with the bylaws, stated in the notice of the annual meeting. If no place is stated in or fixed in accordance with the bylaws, or stated in the notice of the annual meeting, annual meetings shall be held at the corporation's principal office.

(3) The failure to hold the annual meeting at the time stated in or fixed in accordance with a corporation's bylaws or pursuant to this act does not affect the validity of any corporate action and shall not work a forfeiture of or dissolution of the corporation.

(4) If authorized by the board of directors, and subject to such guidelines and procedures as the board of directors may adopt, shareholders and proxy holders not physically present at an annual meeting of shareholders may, by means of remote communication:

(a) Participate in an annual meeting of shareholders.

(b) Be deemed present in person and vote at an annual meeting of shareholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that:

1. The corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the annual meeting by means of remote communication is a shareholder or proxy holder;

2. The corporation shall implement reasonable measures to provide such shareholders or proxy holders a reasonable opportunity to participate in the annual meeting and to vote on matters submitted to the shareholders, including, without limitation, an opportunity to communicate and to read or hear the proceedings of the annual meeting substantially concurrently with such proceedings; and

3. If any shareholder or proxy holder votes or takes other action at the annual meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

**607.0702 Special meeting.—**

(1) A corporation shall hold a special meeting of shareholders:

(a) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(b) If the holders of not less than 10 percent, unless a greater percentage not to exceed 50 percent is required by the articles of incorporation, of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(2) Special shareholders' meetings may be held in or out of the state at a place stated in or fixed in accordance with the bylaws or, when not

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inconsistent with the bylaws, in the notice of the special meeting. If no place is stated in or fixed in accordance with the bylaws or in the notice of the special meeting, special meetings shall be held at the corporation's principal office.

(3) Only business within the purpose or purposes described in the special meeting notice required by s. 607.0705 may be conducted at a special shareholders' meeting.

(4) If authorized by the board of directors, and subject to such guidelines and procedures as the board of directors may adopt, shareholders and proxy holders not physically present at a special meeting of shareholders may, by means of remote communication:

(a) Participate in a special meeting of shareholders.

(b) Be deemed present in person and vote at a special meeting of shareholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that:

1. The corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the special meeting by means of remote communication is a shareholder or proxy holder;

2. The corporation shall implement reasonable measures to provide such shareholders or proxy holders a reasonable opportunity to participate in the special meeting and to vote on matters submitted to the shareholders, including, without limitation, an opportunity to communicate and to read or hear the proceedings of the special meeting substantially concurrently with such proceedings; and

3. If any shareholder or proxy holder votes or takes other action at the special meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

### **607.0703 Court-ordered meeting.—**

(1) The circuit court of the county where a corporation's principal office is located, if located in this state, or where a corporation's registered office is located if its principal office is not located in this state, may, after notice to the corporation, order a meeting to be held:

(a) On application of any shareholder of the corporation entitled to vote in an annual meeting if an annual meeting has not been held within any 13-month period; or

(b) On application of a shareholder who signed a demand for a special meeting valid under s. 607.0702, if:

1. Notice of the special meeting was not given within 60 days after the date the demand was delivered to the corporation's secretary; or

2. The special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, and enter other orders as may be appropriate.

### **607.0704 Action by shareholders without a meeting.—**

(1) Unless otherwise provided in the articles of incorporation, action required or permitted by this act to be taken at an annual or special meeting of shareholders may be taken without a meeting, without prior notice, and without a vote if the action is taken by the holders of outstanding stock of each voting group entitled to vote thereon having not less than the minimum number of votes with respect to each voting group that would be necessary to authorize or take such action at a meeting at which all voting groups and shares entitled to vote thereon were present and voted. In order to be effective the action must be evidenced by one or more written consents describing the action taken, dated and signed by approving shareholders having the requisite number of votes of each voting group entitled to vote thereon, and delivered to the corporation by delivery to its principal office in this state, its principal place of business, the corporate secretary, or another officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. No written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the date of the earliest dated

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consent delivered in the manner required by this section, written consents signed by the number of holders required to take action are delivered to the corporation by delivery as set forth in this section.

(2) Any written consent may be revoked prior to the date that the corporation receives the required number of consents to authorize the proposed action. No revocation is effective unless in writing and until received by the corporation at its principal office or received by the corporate secretary or other officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded.

(3) Within 10 days after obtaining such authorization by written consent, notice must be given to those shareholders who have not consented in writing or who are not entitled to vote on the action. The notice shall fairly summarize the material features of the authorized action and, if the action be such for which dissenters' rights are provided under this act, the notice shall contain a clear statement of the right of shareholders dissenting therefrom to be paid the fair value of their shares upon compliance with further provisions of this act regarding the rights of dissenting shareholders.

(4) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(5) In the event that the action to which the shareholders consent is such as would have required the filing of a certificate under any other section of this act if such action had been voted on by shareholders at a meeting thereof, the certificate filed under such other section shall state that written consent has been given in accordance with the provisions of this section.

(6) Whenever action is taken pursuant to this section, the written consent of the shareholders consenting thereto or the written reports of inspectors appointed to tabulate such consents shall be filed with the minutes of proceedings of shareholders.

### **607.0705 Notice of meeting.—**

(1) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than 10 or more than 60 days before the meeting date. Unless this act or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting. Notice shall be given in the manner provided in s.

607.0141, by or at the direction of the president, the secretary, or the officer or persons calling the meeting. If the notice is mailed at least 30 days before the date of the meeting, it may be done by a class of United States mail other than first class. Notwithstanding s. 607.0141, if mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at her or his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid.

(2) Unless this act or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(3) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(4) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before an adjournment is taken, and any business may be transacted at the adjourned meeting that might have been transacted on the original date of the meeting. If a new record date for the adjourned meeting is or must be fixed under s. 607.0707, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date who are entitled to notice of the meeting.

(5) Notwithstanding the foregoing, no notice of a shareholders' meeting need be given to a shareholder if:

(a) An annual report and proxy statements for two consecutive annual meetings of shareholders or

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(b) All, and at least two checks in payment of dividends or interest on securities during a 12-month period, have been sent by first-class United States mail, addressed to the shareholder at her or his address as it appears on the share transfer books of the corporation, and returned undeliverable. The obligation of the corporation to give notice of a shareholders' meeting to any such shareholder shall be reinstated once the corporation has received a new address for such shareholder for entry on its share transfer books.

**607.0706 Waiver of notice.—**

(1) A shareholder may waive any notice required by this act, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records. Neither the business to be transacted at nor the purpose of any regular or special meeting of the shareholders need be specified in any written waiver of notice unless so required by the articles of incorporation or the bylaws.

(2) A shareholder's attendance at a meeting:

- (a) Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; or
- (b) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

**607.0707 Record date.—**

(1) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing such a record date, the board of directors of the corporation may fix the record date. In no event may a record date fixed by the board of directors be a date

preceding the date upon which the resolution fixing the record date is adopted.

(2) If not otherwise provided by or pursuant to the bylaws, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder delivers his or her demand to the corporation.

(3) If not otherwise provided by or pursuant to the bylaws and no prior action is required by the board of directors pursuant to this act, the record date for determining shareholders entitled to take action without a meeting is the date the first signed written consent is delivered to the corporation under s. 607.0704. If not otherwise fixed, and prior action is required by the board of directors pursuant to this chapter, the record date for determining shareholders entitled to take action without a meeting is at the close of business on the day on which the board of directors adopts the resolution taking such prior action.

(4) If not otherwise provided by or pursuant to the bylaws, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the close of business on the day before the first notice is delivered to shareholders.

(5) A record date for purposes of this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.

(6) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(7) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

**607.0720 Shareholders' list for meeting.—**

(1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting, arranged by

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voting group with the address of, and the number and class and series, if any, of shares held by, each.

(2) The shareholders' list must be available for inspection by any shareholder for a period of 10 days prior to the meeting or such shorter time as exists between the record date and the meeting and continuing through the meeting at the corporation's principal office, at a place identified in the meeting notice in the city where the meeting will be held, or at the office of the corporation's transfer agent or registrar. A shareholder or the shareholder's agent or attorney is entitled on written demand to inspect the list (subject to the requirements of s.

607.1602(3)), during regular business hours and at his or her expense, during the period it is available for inspection.

(3) The corporation shall make the shareholders' list available at the meeting, and any shareholder or the shareholder's agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) The shareholders' list is prima facie evidence of the identity of shareholders entitled to examine the shareholders' list or to vote at a meeting of shareholders.

(5) If the requirements of this section have not been substantially complied with or if the corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect the shareholders' list before or at the meeting, the meeting shall be adjourned until such requirements are complied with on the demand of any shareholder in person or by proxy who failed to get such access, or, if not adjourned upon such demand and such requirements are not complied with, the circuit court of the county where a corporation's principal office (or, if none in this state, its registered office) is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(6) Refusal or failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting.

(7) A shareholder may not sell or otherwise distribute any information or records inspected

under this section, except to the extent that such use is for a proper purpose as defined in s. 607.1602(3). Any person who violates this provision shall be subject to a civil penalty of \$5,000.

### **607.0721 Voting entitlement of shares.—**

(1) Except as provided in subsections (2), (3), and (4) or unless the articles of incorporation or this act provides otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter submitted to a vote at a meeting of shareholders. Only shares are entitled to vote. If the articles of incorporation provide for more or less than one vote for any share on any matter, every reference in this act to a majority or other proportion of shares shall refer to such a majority or other proportion of votes entitled to be cast.

(2) The shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(3) Subsection (2) does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(4) Redeemable shares are not entitled to vote on any matter, and shall not be deemed to be outstanding, after notice of redemption is mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank, trust company, or other financial institution upon an irrevocable obligation to pay the holders the redemption price upon surrender of the shares.

(5) Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of the corporate shareholder may prescribe or, in the absence of any applicable provision, by such person as the board of directors of the corporate shareholder may designate. In the absence of any such designation or in case of conflicting designation by the corporate shareholder, the chair of the board, the president, any vice president, the secretary, and the treasurer of the corporate shareholder, in that order, shall be presumed to be fully authorized to vote such shares.

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(6) Shares held by an administrator, executor, guardian, personal representative, or conservator may be voted by him or her, either in person or by proxy, without a transfer of such shares into his or her name. Shares standing in the name of a trustee may be voted by him or her, either in person or by proxy, but no trustee shall be entitled to vote shares held by him or her without a transfer of such shares into his or her name or the name of his or her nominee.

(7) Shares held by or under the control of a receiver, a trustee in bankruptcy proceedings, or an assignee for the benefit of creditors may be voted by him or her without the transfer thereof into his or her name.

(8) If a share or shares stand of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two or more persons have the same fiduciary relationship respecting the same shares, unless the secretary of the corporation is given notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, then acts with respect to voting have the following effect:

(a) If only one votes, in person or by proxy, his or her act binds all;

(b) If more than one vote, in person or by proxy, the act of the majority so voting binds all;

(c) If more than one vote, in person or by proxy, but the vote is evenly split on any particular matter, each faction is entitled to vote the share or shares in question proportionally;

(d) If the instrument or order so filed shows that any such tenancy is held in unequal interest, a majority or a vote evenly split for purposes of this subsection shall be a majority or a vote evenly split in interest;

(e) The principles of this subsection shall apply, insofar as possible, to execution of proxies, waivers, consents, or objections and for the purpose of ascertaining the presence of a quorum.

(9) Subject to s. 607.0723, nothing herein contained shall prevent trustees or other fiduciaries holding shares registered in the name of a nominee from causing such shares to be voted by such

nominee as the trustee or other fiduciary may direct. Such nominee may vote shares as directed by a trustee or other fiduciary without the necessity of transferring the shares to the name of the trustee or other fiduciary.

**607.0722 Proxies.—**

(1) A shareholder, other person entitled to vote on behalf of a shareholder pursuant to s. 607.0721, or attorney in fact for a shareholder may vote the shareholder's shares in person or by proxy.

(2)(a) A shareholder, other person entitled to vote on behalf of a shareholder pursuant to s. 607.0721, or attorney in fact for a shareholder may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by electronic transmission. Any type of electronic transmission appearing to have been, or containing or accompanied by such information or obtained under such procedures to reasonably ensure that the electronic transmission was, transmitted by such person is a sufficient appointment, subject to the verification requested by the corporation under s. 607.0724.

(b) Without limiting the manner in which a shareholder, other person entitled to vote on behalf of a shareholder pursuant to s. 607.0721, or attorney in fact for a shareholder may appoint a proxy to vote or otherwise act for the shareholder pursuant to paragraph (a), a shareholder, other person entitled to vote on behalf of a shareholder pursuant to s. 607.0721, or attorney in fact for a shareholder may make such an appointment by:

1. Signing an appointment form, with the signature affixed, by any reasonable means including, but not limited to, facsimile or electronic signature.

2. Transmitting or authorizing the transmission of an electronic transmission to the person who will be appointed as the proxy or to a proxy solicitation firm, proxy support service organization, registrar, or agent authorized by the person who will be designated as the proxy to receive such transmission. However, any electronic transmission must set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the shareholder,

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other person entitled to vote on behalf of a shareholder pursuant to s. 607.0721, or attorney in fact for a shareholder. If it is determined that the electronic transmission is valid, the inspectors of election or, if there are no inspectors, such other persons making that determination shall specify the information upon which they relied.

(3) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for up to 11 months unless a longer period is expressly provided in the appointment.

(4) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his or her authority under the appointment.

(5) An appointment of a proxy is revocable by the shareholder unless the appointment form or electronic transmission conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

- (a) A pledgee;
- (b) A person who purchased or agreed to purchase the shares;
- (c) A creditor of the corporation who extended credit to the corporation under terms requiring the appointment;
- (d) An employee of the corporation whose employment contract requires the appointment; or
- (e) A party to a voting agreement created under s. 607.0731.

(6) An appointment made irrevocable under subsection (5) becomes revocable when the interest with which it is coupled is extinguished.

(7) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when he or she acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to s. 607.0724 and to any express limitation on the proxy's authority appearing on the face of the appointment form or in the electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

(9) If an appointment form expressly provides, any proxy holder may appoint, in writing, a substitute to act in his or her place.

(10) Any copy, facsimile transmission, or other reliable reproduction of the writing or electronic transmission created under subsection (2) may be substituted or used in lieu of the original writing or electronic transmission for any purpose for which the original writing or electronic transmission could be used if the copy, facsimile transmission, or other reproduction is a complete reproduction of the entire original writing or electronic transmission.

(11) A corporation may adopt bylaws authorizing additional means or procedures for shareholders to use in exercising rights granted by this section.

### **607.0723 Shares held by nominees.—**

(1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(2) The procedure may set forth:

- (a) The types of nominees to which it applies;
- (b) The rights or privileges that the corporation recognizes in a beneficial owner;
- (c) The manner in which the procedure is selected by the nominee;
- (d) The information that must be provided when the procedure is selected;
- (e) The period for which selection of the procedure is effective; and
- (f) Other aspects of the rights and duties created.

### **607.0724 Corporation's acceptance of votes.—**

(1) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or

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proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

(a) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) The name signed purports to be that of an administrator, executor, guardian, personal representative, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(c) The name signed purports to be that of a receiver, trustee in bankruptcy, or assignee for the benefit of creditors of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(d) The name signed purports to be that of a pledgee, beneficial owner, or attorney in fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(e) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coowners and the person signing appears to be acting on behalf of all the coowners.

(3) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with

the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

### **607.0725 Quorum and voting requirements for voting groups.—**

(1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this act provides otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(2) Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(3) If a quorum exists, action on a matter (other than the election of directors) by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this act requires a greater number of affirmative votes.

(4) The holders of a majority of the shares represented, and who would be entitled to vote at a meeting if a quorum were present, where a quorum is not present, may adjourn such meeting from time to time.

(5) The articles of incorporation may provide for a greater voting requirement or a greater or lesser quorum requirement for shareholders, or voting groups of shareholders, than is provided by this act, but in no event shall a quorum consist of less than one-third of the shares entitled to vote.

(6) An amendment to the articles of incorporation that adds, changes, or deletes a greater or lesser quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under

the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

(7) The election of directors is governed by s. 607.0728.

**607.0726 Action by single and multiple voting groups.—**

(1) If the articles of incorporation or this act provides for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in s. 607.0725.

(2) If the articles of incorporation or this act provides for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in s. 607.0725. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

**607.0728 Voting for directors; cumulative voting.—**

(1) Unless otherwise provided in the articles of incorporation, or in a bylaw that fixes a greater voting requirement for the election of directors and that is adopted by the board of directors or shareholders of a corporation having shares listed on a national securities exchange at the time of adoption, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present. A bylaw provision or amendment adopted by shareholders which specifies the votes necessary for the election of directors may not be further amended or repealed by the board of directors.

(2) Each shareholder who is entitled to vote at an election of directors has the right to vote the number of shares owned by him or her for as many persons as there are directors to be elected and for whose election the shareholder has a right to vote. Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

(3) A statement included in the articles of incorporation that “all or a designated voting group of shareholders are entitled to cumulate their votes

for directors,” or words of similar import, means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

**607.0730 Voting trusts.—**

(1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for him or her or for them, by signing an agreement setting out the provisions of the trust (which may include anything consistent with its purpose) and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation’s principal office. After filing a copy of the list and agreement in the corporation’s principal office, such copy shall be open to inspection by any shareholder of the corporation (subject to the requirements of s. 607.1602(3)) or any beneficiary of the trust under the agreement during business hours.

(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee’s name.

**607.0731 Shareholders’ agreements.—**

(1) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A shareholders’ agreement created under this section is not subject to the provisions of s. 607.0730.

(2) A shareholders’ agreement created under this section is specifically enforceable.

(3) A transferee of shares in a corporation the shareholders of which have entered into an agreement authorized by subsection (1) shall be bound by such agreement if the transferee takes shares subject to such agreement with notice thereof. A transferee shall be deemed to have notice of any such agreement or any such renewal if the

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existence thereof is noted on the face or back of the certificate or certificates representing such shares.

**607.0732 Shareholder agreements.—**

- (1) An agreement among the shareholders of a corporation with 100 or fewer shareholders at the time of the agreement, that complies with this section, is effective among the shareholders and the corporation, even though it is inconsistent with one or more other provisions of this chapter, if it:
- (a) Eliminates the board of directors or restricts the discretion or powers of the board of directors;
  - (b) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in s. 607.06401;
  - (c) Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;
  - (d) Governs, in general or in regard to specific matters, the exercise or division of voting power by the shareholders and directors, including use of weighted voting rights or director proxies;
  - (e) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation;
  - (f) Transfers to any shareholder or other person any authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders; or
  - (g) Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency.
  - (h) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship between the shareholders, the directors, or the corporation, and is not contrary to public policy. For purposes of this paragraph, agreements contrary to public policy include, but are not limited to, agreements that reduce the duties of care and loyalty to the corporation as required by ss. 607.0830 and 607.0832, exculpate directors from liability that

may be imposed under s. 607.0831, adversely affect shareholders' rights to bring derivative actions under s. 607.07401, or abrogate dissenters' rights under ss. 607.1301-607.1320.

- (2) An agreement authorized by this section shall be:
- (a)1. Set forth in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time the agreement; or
  - 2. Set forth in a written agreement that is signed by all persons who are shareholders at the time of the agreement and such written agreement is made known to the corporation.
  - (b) Subject to termination or amendment only by all persons who are shareholders at the time of the termination or amendment, unless the agreement provides otherwise with respect to termination and with respect to amendments that do not change the designation, rights, preferences, or limitations of any of the shares of a class or series.
  - (3) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by s. 607.0626(2). If at the time of the agreement the corporation has shares outstanding which are represented by certificates, the corporation shall recall such certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of the purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within earlier of 90 days after discovery of the existence of the

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agreement or 2 years after the time of purchase of the shares.

(4) An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly quoted in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

### **607.07401 Shareholders' derivative actions.—**

(1) A person may not commence a proceeding in the right of a domestic or foreign corporation unless the person was a shareholder of the corporation when the transaction complained of occurred or unless the person became a shareholder through transfer by operation of law from one who was a shareholder at that time.

(2) A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity the demand made to obtain action

by the board of directors and that the demand was refused or ignored by the board of directors for a period of at least 90 days from the first demand unless, prior to the expiration of the 90 days, the person was notified in writing that the corporation rejected the demand, or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period. If the corporation commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed.

(3) The court may dismiss a derivative proceeding if, on motion by the corporation, the court finds that one of the groups specified below has made a determination in good faith after conducting a reasonable investigation upon which its conclusions are based that the maintenance of the derivative suit is not in the best interests of the corporation. The corporation shall have the burden of proving the independence and good faith of the group making the determination and the reasonableness of the investigation. The determination shall be made by:

(a) A majority vote of independent directors present at a meeting of the board of directors, if the independent directors constitute a quorum;

(b) A majority vote of a committee consisting of two or more independent directors appointed by a majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors constitute a quorum; or

(c) A panel of one or more independent persons appointed by the court upon motion by the corporation.

(4) A proceeding commenced under this section may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholders or a class, series, or voting group of shareholders, the court shall direct that notice be given to the shareholders affected. The court may determine which party or parties to the proceeding shall bear the expense of giving the notice.

(5) On termination of the proceeding, the court may require the plaintiff to pay any defendant's reasonable expenses, including reasonable attorney's fees, incurred in defending the

proceeding if it finds that the proceeding was commenced without reasonable cause.

(6) The court may award reasonable expenses for maintaining the proceeding, including reasonable attorney's fees, to a successful plaintiff or to the person commencing the proceeding who receives any relief, whether by judgment, compromise, or settlement, and require that the person account for the remainder of any proceeds to the corporation; however, this subsection does not apply to any relief rendered for the benefit of injured shareholders only and limited to a recovery of the loss or damage of the injured shareholders.

(7) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on his or her behalf.

**607.0801 Requirement for and duties of board of directors.—**

(1) Except as provided in s. 607.0732(1), each corporation must have a board of directors.

(2) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under s. 607.0732.

**607.0802 Qualifications of directors.—**

(1) Directors must be natural persons who are 18 years of age or older but need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe additional qualifications for directors.

(2) In the event that the eligibility to serve as a member of the board of directors of a condominium association, cooperative association, homeowners' association, or mobile home owners' association is restricted to membership in such association and membership is appurtenant to ownership of a unit, parcel, or mobile home, a grantor of a trust described in s. 733.707(3), or a qualified beneficiary as defined in s. 736.0103(14) of a trust which owns a unit, parcel, or mobile home shall be deemed a member of the association and eligible to serve as a

director of the condominium association, cooperative association, homeowners' association, or mobile home owners' association, provided that said beneficiary occupies the unit, parcel, or mobile home.

**607.0803 Number of directors.—**

(1) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws.

(3) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under s. 607.0806.

**607.0804 Election of directors by certain voting groups.—**The articles of incorporation may confer upon holders of any voting group the right to elect one or more directors who shall serve for such term and have such voting powers as are stated in the articles of incorporation. The terms of office and voting powers of the directors elected in the manner provided in the articles of incorporation may be greater than or less than those of any other director or class of directors. If the articles of incorporation provide that directors elected by the holders of a voting group shall have more or less than one vote per director on any matter, every reference in this act to a majority or other proportion of directors shall refer to a majority or other proportion of the votes of such directors.

The articles of incorporation may confer upon holders of any voting group the right to elect one or more directors who shall serve for such term and have such voting powers as are stated in the articles of incorporation. The terms of office and voting powers of the directors elected in the manner provided in the articles of incorporation may be greater than or less than those of any other director or class of directors. If the articles of incorporation provide that directors elected by the holders of a voting group shall have more or less than one vote per director on any matter, every reference in this act to a majority or other proportion of directors shall refer to a majority or other proportion of the votes of such directors.

**607.0805 Terms of directors generally.—**

(1) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under s. 607.0806.

(3) A decrease in the number of directors does not shorten an incumbent director's term.

(4) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(5) Despite the expiration of a director's term, the director continues to serve until his or her successor is elected and qualifies or until there is a decrease in the number of directors.

**607.0806 Staggered terms for directors.—**

(1) The directors of any corporation organized under this act may, by the articles of incorporation or by an initial bylaw, or by a bylaw adopted by a vote of the shareholders, be divided into one, two, or three classes with the number of directors in each class being as nearly equal as possible; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class 1 year thereafter; of the third class 2 years thereafter; and at each annual election held after such classification and election, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire. If the directors have staggered terms, then any increase or decrease in the number of directors shall be so apportioned among the classes as to make all classes as nearly equal in number as possible.

(2) In the case of any Florida corporation in existence prior to July 1, 1990, directors of such corporation divided into four classes may continue to serve staggered terms as the articles of incorporation or bylaws of such corporation provided immediately prior to the effective date of this act, unless and until the articles of incorporation or bylaws are amended to alter or terminate such classes.

**607.0807 Resignation of directors.—**

(1) A director may resign at any time by delivering written notice to the board of directors or its chair or to the corporation.

(2) A resignation is effective when the notice is delivered unless the notice specifies a later effective date or an effective date determined upon the subsequent happening of an event. If a resignation is made effective at a later date or upon the subsequent happening of an event, the board of directors may fill the pending vacancy before the effective date

occurs if the board of directors provides that the successor does not take office until the effective date.

(3) A resignation that specifies a later effective date or that is conditioned upon the subsequent happening of an event may provide that the resignation is irrevocable.

**607.0808 Removal of directors by shareholders.—**

(1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him or her.

(3) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against his or her removal. If cumulate voting is not authorized, a director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast not to remove him or her.

(4) A director may be removed by the shareholders at a meeting of shareholders, provided the notice of the meeting states that the purpose, or one of the purposes, of the meeting is removal of the director.

**607.0809 Vacancy on board.—**

(1) Whenever a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors, it may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, or by the shareholders, unless the articles of incorporation provide otherwise.

(2) Whenever the holders of shares of any voting group are entitled to elect a class of one or more directors by the provisions of the articles of incorporation, vacancies in such class may be filled by holders of shares of that voting group or by a majority of the directors then in office elected by such voting group or by a sole remaining director so

elected. If no director elected by such voting group remains in office, unless the articles of incorporation provide otherwise, directors not elected by such voting group may fill vacancies as provided in subsection (1).

(3) A vacancy that may occur at a later date (under s. 607.0807(2) by reason of a resignation effective at a later date or upon the subsequent happening of an event) may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

**607.08101 Compensation of directors.**—Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

**607.0820 Meetings.**—

(1) The board of directors may hold regular or special meetings in or out of this state.

(2) A majority of the directors present, whether or not a quorum exists, may adjourn any meeting of the board of directors to another time and place. Unless the bylaws otherwise provide, notice of any such adjourned meeting shall be given to the directors who were not present at the time of the adjournment and, unless the time and place of the adjourned meeting are announced at the time of the adjournment, to the other directors.

(3) Meetings of the board of directors may be called by the chair of the board or by the president unless otherwise provided in the articles of incorporation or the bylaws.

(4) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

**607.0821 Action by directors without a meeting.**—

(1) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this act to be taken at a board of directors' meeting or committee meeting may be taken without a meeting if the action is taken by all members of the board or of the committee. The action must be evidenced by one or more written consents describing the action taken and signed by each director or committee member.

(2) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(3) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

**607.0822 Notice of meetings.**—

(1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least 2 days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

**607.0823 Waiver of notice.**—Notice of a meeting of the board of directors need not be given to any director who signs a waiver of notice either before or after the meeting. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting and a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when a director states, at the beginning of the meeting or promptly upon arrival at the meeting, any objection to the transaction of business because the meeting is not lawfully called or convened.

**607.0824 Quorum and voting.—**

- (1) Unless the articles of incorporation or bylaws require a different number, a quorum of a board of directors consists of a majority of the number of directors prescribed by the articles of incorporation or the bylaws.
- (2) The articles of incorporation may authorize a quorum of a board of directors to consist of less than a majority but no fewer than one-third of the prescribed number of directors determined under the articles of incorporation or the bylaws.
- (3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.
- (4) A director of a corporation who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless the director:
  - (a) Objects at the beginning of the meeting (or promptly upon his or her arrival) to holding it or transacting specified business at the meeting; or
  - (b) Votes against or abstains from the action taken.

**607.0825 Committees.—**

- (1) Unless the articles of incorporation or the bylaws otherwise provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors, except that no such committee shall have the authority to:
  - (a) Approve or recommend to shareholders actions or proposals required by this act to be approved by shareholders.
  - (b) Fill vacancies on the board of directors or any committee thereof.
  - (c) Adopt, amend, or repeal the bylaws.

- (d) Authorize or approve the reacquisition of shares unless pursuant to a general formula or method specified by the board of directors.
- (e) Authorize or approve the issuance or sale or contract for the sale of shares, or determine the designation and relative rights, preferences, and limitations of a voting group except that the board of directors may authorize a committee (or a senior executive officer of the corporation) to do so within limits specifically prescribed by the board of directors.
- (2) Unless the articles of incorporation or bylaws provide otherwise, ss. 607.0820, 607.0822, 607.0823, and 607.0824 which govern meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors apply to committees and their members as well.
- (3) Each committee must have two or more members who serve at the pleasure of the board of directors. The board, by resolution adopted in accordance with subsection (1), may designate one or more directors as alternate members of any such committee who may act in the place and stead of any absent member or members at any meeting of such committee.
- (4) Neither the designation of any such committee, the delegation thereto of authority, nor action by such committee pursuant to such authority shall alone constitute compliance by any member of the board of directors not a member of the committee in question with his or her responsibility to act in good faith, in a manner he or she reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

**607.0830 General standards for directors.—**

- (1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:
  - (a) In good faith;
  - (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
  - (c) In a manner he or she reasonably believes to be in the best interests of the corporation.

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(2) In discharging his or her duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (a) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
- (b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the persons' professional or expert competence; or
- (c) A committee of the board of directors of which he or she is not a member if the director reasonably believes the committee merits confidence.

(3) In discharging his or her duties, a director may consider such factors as the director deems relevant, including the long-term prospects and interests of the corporation and its shareholders, and the social, economic, legal, or other effects of any action on the employees, suppliers, customers of the corporation or its subsidiaries, the communities and society in which the corporation or its subsidiaries operate, and the economy of the state and the nation.

(4) A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(5) A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

**607.0831 Liability of directors.—**

(1) A director is not personally liable for monetary damages to the corporation or any other person for any statement, vote, decision, or failure to act, regarding corporate management or policy, by a director, unless:

- (a) The director breached or failed to perform his or her duties as a director; and
- (b) The director's breach of, or failure to perform, those duties constitutes:

1. A violation of the criminal law, unless the director had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful. A

judgment or other final adjudication against a director in any criminal proceeding for a violation of the criminal law estops that director from contesting the fact that his or her breach, or failure to perform, constitutes a violation of the criminal law; but does not estop the director from establishing that he or she had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful;

2. A transaction from which the director derived an improper personal benefit, either directly or indirectly;

3. A circumstance under which the liability provisions of s. 607.0834 are applicable;

4. In a proceeding by or in the right of the corporation to procure a judgment in its favor or by or in the right of a shareholder, conscious disregard for the best interest of the corporation, or willful misconduct; or

5. In a proceeding by or in the right of someone other than the corporation or a shareholder, recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(2) For the purposes of this section, the term "recklessness" means the action, or omission to act, in conscious disregard of a risk:

(a) Known, or so obvious that it should have been known, to the director; and

(b) Known to the director, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission.

(3) A director is deemed not to have derived an improper personal benefit from any transaction if the transaction and the nature of any personal benefit derived by the director are not prohibited by state or federal law or regulation and, without further limitation:

(a) In an action other than a derivative suit regarding a decision by the director to approve, reject, or otherwise affect the outcome of an offer to purchase the stock of, or to effect a merger of, the corporation, the transaction and the nature of any personal benefits derived by a director are disclosed

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or known to all directors voting on the matter, and the transaction was authorized, approved, or ratified by at least two directors who comprise a majority of the disinterested directors (whether or not such disinterested directors constitute a quorum);

(b) The transaction and the nature of any personal benefits derived by a director are disclosed or known to the shareholders entitled to vote, and the transaction was authorized, approved, or ratified by the affirmative vote or written consent of such shareholders who hold a majority of the shares, the voting of which is not controlled by directors who derived a personal benefit from or otherwise had a personal interest in the transaction; or

(c) The transaction was fair and reasonable to the corporation at the time it was authorized by the board, a committee, or the shareholders, notwithstanding that a director received a personal benefit.

(4) The circumstances set forth in subsection (3) are not exclusive and do not preclude the existence of other circumstances under which a director will be deemed not to have derived an improper benefit.

### **607.0832 Director conflicts of interest.—**

(1) No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested shall be either void or voidable because of such relationship or interest, because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction, or because his or her or their votes are counted for such purpose, if:

(a) The fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors;

(b) The fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or written consent; or

(c) The contract or transaction is fair and reasonable as to the corporation at the time it is authorized by the board, a committee, or the shareholders.

(2) For purposes of paragraph (1)(a) only, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors, or on the committee, who have no relationship or interest in the transaction described in subsection (1), but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no such relationship or interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with such relationship or interest in the transaction does not affect the validity of any action taken under paragraph (1)(a) if the transaction is otherwise authorized, approved, or ratified as provided in that subsection, but such presence or vote of those directors may be counted for purposes of determining whether the transaction is approved under other sections of this act.

(3) For purposes of paragraph (1)(b), a conflict of interest transaction is authorized, approved, or ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection. Shares owned by or voted under the control of a director who has a relationship or interest in the transaction described in subsection (1) may not be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interest transaction under paragraph (1)(b). The vote of those shares, however, is counted in determining whether the transaction is approved under other sections of this act. A majority of the shares, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

**607.0833 Loans to officers, directors, and employees; guaranty of obligations.**—Any corporation may lend money to, guarantee any obligation of, or otherwise assist any officer, director, or employee of the corporation or of a subsidiary, whenever, in the judgment of the board of directors, such loan, guaranty, or assistance may reasonably be expected to benefit the corporation. The loan, guaranty, or other assistance may be with or without interest and may be unsecured or secured in such manner as the board of directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in this section shall be deemed to deny, limit, or restrict the powers of guaranty or warranty of any corporation at common law or under any statute. Loans, guarantees, or other types of assistance are subject to s. 607.0832.

**607.0834 Liability for unlawful distributions.**—

- (1) A director who votes for or assents to a distribution made in violation of s. 607.06401 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating s. 607.06401 or the articles of incorporation if it is established that the director did not perform his or her duties in compliance with s. 607.0830. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.
- (2) A director held liable under subsection (1) for an unlawful distribution is entitled to contribution:
  - (a) From every other director who could be liable under subsection (1) for the unlawful distribution; and
  - (b) From each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of s. 607.06401 or the articles of incorporation.
- (3) A proceeding under this section is barred unless it is commenced within 2 years after the date on which the effect of the distribution was measured under s. 607.06401(6) or (8).

**607.08401 Required officers.**—

- (1) A corporation shall have the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.
- (2) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.
- (3) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.
- (4) The same individual may simultaneously hold more than one office in a corporation.

**Note.—Former s. 607.0840.**

607.0841 Duties of officers.—Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of any officer authorized by the bylaws or the board of directors to prescribe the duties of other officers.

**607.0842 Resignation and removal of officers.**—

- (1) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.
- (2) A board of directors may remove any officer at any time with or without cause. Any officer or assistant officer, if appointed by another officer, may likewise be removed by such officer.

**607.0843 Contract rights of officers.**—

- (1) The appointment of an officer does not itself create contract rights.
- (2) An officer's removal does not affect the officer's contract rights, if any, with the corporation.

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An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

**607.0850 Indemnification of officers, directors, employees, and agents.—**

(1) A corporation shall have power to indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the corporation), by reason of the fact that he or she is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against liability incurred in connection with such proceeding, including any appeal thereof, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the corporation or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(2) A corporation shall have power to indemnify any person, who was or is a party to any proceeding by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses and amounts paid in settlement not exceeding, in the judgment of the board of directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good faith and in a manner he or she

reasonably believed to be in, or not opposed to, the best interests of the corporation, except that no indemnification shall be made under this subsection in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(3) To the extent that a director, officer, employee, or agent of a corporation has been successful on the merits or otherwise in defense of any proceeding referred to in subsection (1) or subsection (2), or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses actually and reasonably incurred by him or her in connection therewith.

(4) Any indemnification under subsection (1) or subsection (2), unless pursuant to a determination by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in subsection (1) or subsection (2). Such determination shall be made:

(a) By the board of directors by a majority vote of a quorum consisting of directors who were not parties to such proceeding;

(b) If such a quorum is not obtainable or, even if obtainable, by majority vote of a committee duly designated by the board of directors (in which directors who are parties may participate) consisting solely of two or more directors not at the time parties to the proceeding;

(c) By independent legal counsel:

1. Selected by the board of directors prescribed in paragraph (a) or the committee prescribed in paragraph (b); or

2. If a quorum of the directors cannot be obtained for paragraph (a) and the committee cannot be designated under paragraph (b), selected by majority

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vote of the full board of directors (in which directors who are parties may participate); or

(d) By the shareholders by a majority vote of a quorum consisting of shareholders who were not parties to such proceeding or, if no such quorum is obtainable, by a majority vote of shareholders who were not parties to such proceeding.

(5) Evaluation of the reasonableness of expenses and authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible. However, if the determination of permissibility is made by independent legal counsel, persons specified by paragraph (4)(c) shall evaluate the reasonableness of expenses and may authorize indemnification.

(6) Expenses incurred by an officer or director in defending a civil or criminal proceeding may be paid by the corporation in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if he or she is ultimately found not to be entitled to indemnification by the corporation pursuant to this section. Expenses incurred by other employees and agents may be paid in advance upon such terms or conditions that the board of directors deems appropriate.

(7) The indemnification and advancement of expenses provided pursuant to this section are not exclusive, and a corporation may make any other or further indemnification or advancement of expenses of any of its directors, officers, employees, or agents, under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office. However, indemnification or advancement of expenses shall not be made to or on behalf of any director, officer, employee, or agent if a judgment or other final adjudication establishes that his or her actions, or omissions to act, were material to the cause of action so adjudicated and constitute:

(a) A violation of the criminal law, unless the director, officer, employee, or agent had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful;

(b) A transaction from which the director, officer, employee, or agent derived an improper personal benefit;

(c) In the case of a director, a circumstance under which the liability provisions of s. 607.0834 are applicable; or

(d) Willful misconduct or a conscious disregard for the best interests of the corporation in a proceeding by or in the right of the corporation to procure a judgment in its favor or in a proceeding by or in the right of a shareholder.

(8) Indemnification and advancement of expenses as provided in this section shall continue as, unless otherwise provided when authorized or ratified, to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person, unless otherwise provided when authorized or ratified.

(9) Unless the corporation's articles of incorporation provide otherwise, notwithstanding the failure of a corporation to provide indemnification, and despite any contrary determination of the board or of the shareholders in the specific case, a director, officer, employee, or agent of the corporation who is or was a party to a proceeding may apply for indemnification or advancement of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice that it considers necessary, may order indemnification and advancement of expenses, including expenses incurred in seeking court-ordered indemnification or advancement of expenses, if it determines that:

(a) The director, officer, employee, or agent is entitled to mandatory indemnification under subsection (3), in which case the court shall also order the corporation to pay the director reasonable expenses incurred in obtaining court-ordered indemnification or advancement of expenses;

(b) The director, officer, employee, or agent is entitled to indemnification or advancement of expenses, or both, by virtue of the exercise by the corporation of its power pursuant to subsection (7); or

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(c) The director, officer, employee, or agent is fairly and reasonably entitled to indemnification or advancement of expenses, or both, in view of all the relevant circumstances, regardless of whether such person met the standard of conduct set forth in subsection (1), subsection (2), or subsection (7).

(10) For purposes of this section, the term “corporation” includes, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger, so that any person who is or was a director, officer, employee, or agent of a constituent corporation, or is or was serving at the request of a constituent corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, is in the same position under this section with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

(11) For purposes of this section:

- (a) The term “other enterprises” includes employee benefit plans;
- (b) The term “expenses” includes counsel fees, including those for appeal;
- (c) The term “liability” includes obligations to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to any employee benefit plan), and expenses actually and reasonably incurred with respect to a proceeding;
- (d) The term “proceeding” includes any threatened, pending, or completed action, suit, or other type of proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal;
- (e) The term “agent” includes a volunteer;
- (f) The term “serving at the request of the corporation” includes any service as a director, officer, employee, or agent of the corporation that imposes duties on such persons, including duties relating to an employee benefit plan and its participants or beneficiaries; and
- (g) The term “not opposed to the best interest of the corporation” describes the actions of a person who acts in good faith and in a manner he or she reasonably believes to be in the best interests of the

participants and beneficiaries of an employee benefit plan.

(12) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the corporation would have the power to indemnify the person against such liability under the provisions of this section.

**607.0901 Affiliated transactions.—**

- (1) For purposes of this section:
  - (a) “Affiliate” means a person who directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person.
  - (b) “Affiliated transaction,” when used in reference to the corporation and any interested shareholder, means:
    - 1. Any merger or consolidation of the corporation or any subsidiary of the corporation with:
      - a. The interested shareholder; or
      - b. Any other corporation (whether or not itself an interested shareholder) which is, or after such merger or consolidation would be, an affiliate or associate of the interested shareholder;
    - 2. Any sale, lease, exchange, mortgage, pledge, transfer, or other disposition (in one transaction or a series of transactions) to or with the interested shareholder or any affiliate or associate of the interested shareholder of assets of the corporation or any subsidiary of the corporation:
      - a. Having an aggregate fair market value equal to 5 percent or more of the aggregate fair market value of all the assets, determined on a consolidated basis, of the corporation;
      - b. Having an aggregate fair market value equal to 5 percent or more of the aggregate fair market value of all the outstanding shares of the corporation; or

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c. Representing 5 percent or more of the earning power or net income, determined on a consolidated basis, of the corporation;

3. The issuance or transfer by the corporation or any subsidiary of the corporation (in one transaction or a series of transactions) of any shares of the corporation or any subsidiary of the corporation which have an aggregate fair market value equal to 5 percent or more of the aggregate fair market value of all the outstanding shares of the corporation to the interested shareholder or any affiliate or associate of the interested shareholder except pursuant to the exercise of warrants or rights to purchase stock offered, or a dividend or distribution paid or made, pro rata to all shareholders of the corporation;

4. The adoption of any plan or proposal for the liquidation or dissolution of the corporation proposed by, or pursuant to any agreement, arrangement, or understanding (whether or not in writing) with, the interested shareholder or any affiliate or associate of the interested shareholder;

5. Any reclassification of securities (including, without limitation, any stock split, stock dividend, or other distribution of shares in respect of shares, or any reverse stock split) or recapitalization of the corporation, or any merger or consolidation of the corporation with any subsidiary of the corporation, or any other transaction (whether or not with or into or otherwise involving the interested shareholder), with the interested shareholder or any affiliate or associate of the interested shareholder, which has the effect, directly or indirectly (in one transaction or a series of transactions during any 12-month period), of increasing by more than 5 percent the percentage of the outstanding voting shares of the corporation or any subsidiary of the corporation beneficially owned by the interested shareholder; or

6. Any receipt by the interested shareholder or any affiliate or associate of the interested shareholder of the benefit, directly or indirectly (except proportionately as a shareholder of the corporation), of any loans, advances, guaranties, pledges, or other financial assistance or any tax credits or other tax advantages provided by or through the corporation.

(c) "Announcement date," when used in reference to any affiliated transaction, means the date of the

first general public announcement of the proposed affiliated transaction or of the intention to propose an affiliated transaction, or the date on which the proposed affiliated transaction or the intention to propose an affiliated transaction is first communicated generally to the shareholders of the corporation, whichever is earlier.

(d) "Associate," when used to indicate a relationship with any person, means any entity, other than the corporation or any of its subsidiaries, of which such person is an officer, director, or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of voting shares; any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is an officer or director of the corporation or any of its affiliates.

(e) A person is deemed to be a "beneficial owner" of voting shares as to which such person and such person's affiliates and associates, individually or in the aggregate, have or share directly, or indirectly through any contract, arrangement, understanding, relationship, or otherwise:

1. Voting power, which includes the power to vote or to direct the voting of the voting shares;

2. Investment power, which includes the power to dispose of or to direct the disposition of the voting shares; or

3. The right to acquire the voting power or investment power, whether such right is exercisable immediately or only after the passage of time, pursuant to any contract, arrangement, or understanding, upon the exercise of conversion rights, exchange rights, warrants, or options, or otherwise; however, in no case shall a director of the corporation be deemed to be the beneficial owner of voting shares beneficially owned by another director of the corporation solely by reason of actions undertaken by such persons in their capacity as directors of the corporation.

(f) "Control" means the possession, directly or indirectly, through the ownership of voting shares, by contract, arrangement, understanding, relationship, or otherwise, of the power to direct or

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cause the direction of the management and policies of a person. Notwithstanding the foregoing, a person shall not be deemed to have control of a corporation if such person holds voting shares, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee, custodian, or trustee for one or more beneficial owners who do not individually or as a group have control of such corporation.

(g) "Determination date" means the date on which an interested shareholder became an interested shareholder.

(h) Unless otherwise specified in the articles of incorporation initially filed with the Department of State, a "disinterested director" means as to any particular interested shareholder:

1. Any member of the board of directors of the corporation who was a member of the board of directors before the later of January 1, 1987, or the determination date; and

2. Any member of the board of directors of the corporation who was recommended for election by, or was elected to fill a vacancy and received the affirmative vote of, a majority of the disinterested directors then on the board.

(i) "Exchange Act" means the Act of Congress known as the Securities Exchange Act of 1934, as the same has been or hereafter may be amended from time to time.

(j) "Fair market value" means:

1. In the case of shares, the highest closing sale price of a share quoted during the 30-day period immediately preceding the date in question on the composite tape for shares listed on the New York Stock Exchange; or, if such shares are not quoted on the composite tape on the New York Stock Exchange or if such shares are not listed on such exchange, the highest closing sale price quoted during such period on the principal United States securities exchange registered under the Exchange Act on which such shares are listed; or, if such shares are not listed on any such exchange, the highest closing bid quotation with respect to a share during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc., automated quotations system or any similar system then in general use; or, if no such

quotations are available, the fair market value of a share on the date in question as determined by a majority of disinterested directors; and

2. In the case of property other than cash or shares, the fair market value of such property on the date in question as determined by a majority of the disinterested directors.

(k) "Interested shareholder" means any person who is the beneficial owner of more than 10 percent of the outstanding voting shares of the corporation. However, the term "interested shareholder" shall not include the corporation or any of its subsidiaries; any savings, employee stock ownership, or other employee benefit plan of the corporation or any of its subsidiaries; or any fiduciary with respect to any such plan when acting in such capacity. For the purpose of determining whether a person is an interested shareholder, the number of voting shares deemed to be outstanding shall include shares deemed owned by the interested shareholder through application of subparagraph (e)3. but shall not include any other voting shares that may be issuable pursuant to any contract, arrangement, or understanding, upon the exercise of conversion rights, exchange rights, warrants, or options, or otherwise.

(l) "Shares" means the units into which the proprietary interests in an entity are divided and includes:

1. Any stock or similar security, any certificate of interest, any participation in any profit-sharing agreement, any voting trust certificate, or any certificate of deposit for shares; and

2. Any security convertible, with or without consideration, into shares; or any warrant, call, or other option or privilege of buying shares without being bound to do so; or any other security carrying any right to acquire, subscribe to, or purchase shares.

(m) "Subsidiary" means, as to any corporation, any other corporation of which it owns, directly or indirectly through one or more subsidiaries, a majority of the voting shares.

(n) "Valuation date" means, if the affiliated transaction is voted upon by shareholders, the day before the date of the vote of shareholders or, if the affiliated transaction is not voted upon by

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shareholders, the date of the consummation of the affiliated transaction.

(o) "Voting shares" means the outstanding shares of all classes or series of the corporation entitled to vote generally in the election of directors.

(2) Except as provided in subsection (4), in addition to any affirmative vote required by any other section of this act or by the articles of incorporation, an affiliated transaction shall be approved by the affirmative vote of the holders of two-thirds of the voting shares other than the shares beneficially owned by the interested shareholder.

(3) A majority of the disinterested directors shall have the power to determine for the purposes of this section:

(a) Whether a person is an interested shareholder;

(b) The number of voting shares beneficially owned by any person;

(c) Whether a person is an affiliate or associate of another; and

(d) Whether the securities to be issued or transferred by the corporation or any of its subsidiaries to any interested shareholder or any affiliate or associate of the interested shareholder have an aggregate fair market value equal to or greater than 5 percent of the aggregate fair market value of all of the outstanding voting shares of the corporation or any of its subsidiaries.

(4) The voting requirements set forth in subsection (2) do not apply to a particular affiliated transaction if all of the conditions specified in any one of the following paragraphs are met:

(a) The affiliated transaction has been approved by a majority of the disinterested directors;

(b) The corporation has not had more than 300 shareholders of record at any time during the 3 years preceding the announcement date;

(c) The interested shareholder has been the beneficial owner of at least 80 percent of the corporation's outstanding voting shares for at least 5 years preceding the announcement date;

(d) The interested shareholder is the beneficial owner of at least 90 percent of the outstanding voting shares of the corporation, exclusive of shares acquired directly from the corporation in a transaction not approved by a majority of the disinterested directors;

(e) The corporation is an investment company registered under the Investment Company Act of 1940; or

(f) In the affiliated transaction, consideration shall be paid to the holders of each class or series of voting shares and all of the following conditions shall be met:

1. The aggregate amount of the cash and the fair market value as of the valuation date of consideration other than cash to be received per share by holders of each class or series of voting shares in such affiliated transaction are at least equal to the highest of the following:

a. If applicable, the highest per share price, including any brokerage commissions, transfer taxes, and soliciting dealers' fees, paid by the interested shareholder for any shares of such class or series acquired by it within the 2-year period immediately preceding the announcement date or in the transaction in which it became an interested shareholder, whichever is higher;

b. The fair market value per share of such class or series on the announcement date or on the determination date, whichever is higher;

c. If applicable, the price per share equal to the fair market value per share of such class or series determined pursuant to sub-subparagraph b., multiplied by the ratio of the highest per share price, including any brokerage commissions, transfer taxes, and soliciting dealers' fees, paid by the interested shareholder for any shares of such class or series acquired by it within the 2-year period immediately preceding the announcement date, to the fair market value per share of such class or series on the first day in such 2-year period on which the interested shareholder acquired any shares of such class or series; and

d. If applicable, the highest preferential amount, if any, per share to which the holders of such class or series are entitled in the event of any voluntary or involuntary dissolution of the corporation.

2. The consideration to be received by holders of outstanding shares shall be in cash or in the same form as the interested shareholder has previously paid for shares of the same class or series, and if the interested shareholder has paid for shares with varying forms of consideration, the form of the

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consideration shall be either cash or the form used to acquire the largest number of shares of such class or series previously acquired by the interested shareholder.

3. During such portion of the 3-year period preceding the announcement date that such interested shareholder has been an interested shareholder, except as approved by a majority of the disinterested directors:

a. There shall have been no failure to declare and pay at the regular date therefor any full periodic dividends, whether or not cumulative, on any outstanding shares of the corporation;

b. There shall have been:

(I) No reduction in the annual rate of dividends paid on any class or series of voting shares, except as necessary to reflect any subdivision of the class or series; and

(II) An increase in such annual rate of dividends as necessary to reflect any reclassification, including any reverse stock split, recapitalization, reorganization, or similar transaction which has the effect of reducing the number of outstanding shares of the class or series; and

c. Such interested shareholder shall not have become the beneficial owner of any additional voting shares except as part of the transaction which results in such interested shareholder becoming an interested shareholder.

4. During such portion of the 3-year period preceding the announcement date that such interested shareholder has been an interested shareholder, except as approved by a majority of the disinterested directors, such interested shareholder shall not have received the benefit, directly or indirectly (except proportionately as a shareholder), of any loans, advances, guaranties, pledges, or other financial assistance or any tax credits or other tax advantages provided by the corporation, whether in anticipation of or in connection with such affiliated transaction or otherwise.

5. Except as otherwise approved by a majority of the disinterested directors, a proxy or information statement describing the affiliated transaction and complying with the requirements of the Exchange Act and the rules and regulations thereunder has been mailed to holders of voting shares of the

corporation at least 25 days before the consummation of such affiliated transaction, whether or not such proxy or information statement is required to be mailed pursuant to the Exchange Act or such rules or regulations.

(5) The provisions of this section do not apply:

(a) To any corporation the original articles of incorporation of which contain a provision expressly electing not to be governed by this section;

(b) To any corporation which adopted an amendment to its articles of incorporation prior to January 1, 1989, expressly electing not to be governed by this section, provided that such amendment does not apply to any affiliated transaction of the corporation with an interested shareholder whose determination date is on or prior to the effective date of such amendment;

(c) To any corporation which adopts an amendment to its articles of incorporation or bylaws, approved by the affirmative vote of the holders, other than interested shareholders and their affiliates and associates, of a majority of the outstanding voting shares of the corporation, excluding the voting shares of interested shareholders and their affiliates and associates, expressly electing not to be governed by this section, provided that such amendment to the articles of incorporation or bylaws shall not be effective until 18 months after such vote of the corporation's shareholders and shall not apply to any affiliated transaction of the corporation with an interested shareholder whose determination date is on or prior to the effective date of such amendment; or

(d) To any affiliated transaction of the corporation with an interested shareholder of the corporation which became an interested shareholder inadvertently, if such interested shareholder, as soon as practicable, divests itself of a sufficient amount of the voting shares of the corporation so that it no longer is the beneficial owner, directly or indirectly, of 10 percent or more of the outstanding voting shares of the corporation, and would not at any time within the 5-year period preceding the announcement date with respect to such affiliated

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transaction have been an interested shareholder but for such inadvertent acquisition.

(6) Any corporation that elected not to be governed by this section, either through a provision in its original articles of incorporation or through an amendment to its articles of incorporation or bylaws may elect to be bound by the provisions of this section by adopting an amendment to its articles of incorporation or bylaws that repeals the original article or the amendment. In addition to any requirements of this act, or the articles of incorporation or bylaws of the corporation, any such amendment shall be approved by the affirmative vote of the holders of two-thirds of the voting shares other than shares beneficially owned by any interested shareholder.

### **607.0902 Control-share acquisitions.—**

(1) “CONTROL SHARES.”—As used in this section, “control shares” means shares that, except for this section, would have voting power with respect to shares of an issuing public corporation that, when added to all other shares of the issuing public corporation owned by a person or in respect to which that person may exercise or direct the exercise of voting power, would entitle that person, immediately after acquisition of the shares, directly or indirectly, alone or as a part of a group, to exercise or direct the exercise of the voting power of the issuing public corporation in the election of directors within any of the following ranges of voting power:

- (a) One-fifth or more but less than one-third of all voting power.
- (b) One-third or more but less than a majority of all voting power.
- (c) A majority or more of all voting power.

### (2) “CONTROL-SHARE ACQUISITION.”—

(a) As used in this section, “control-share acquisition” means the acquisition, directly or indirectly, by any person of ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding control shares.

(b) For purposes of this section, all shares, the beneficial ownership of which is acquired within 90 days before or after the date of the acquisition of the beneficial ownership of shares which result in a

control share acquisition, and all shares the beneficial ownership of which is acquired pursuant to a plan to make a control-share acquisition shall be deemed to have been acquired in the same acquisition.

(c) For purposes of this section, a person who acquires shares in the ordinary course of business for the benefit of others in good faith and not for the purpose of circumventing this section has voting power only of shares in respect of which that person would be able to exercise or direct the exercise of votes without further instruction from others.

(d) The acquisition of any shares of an issuing public corporation does not constitute a control-share acquisition if the acquisition is consummated in any of the following circumstances:

1. Before July 2, 1987.
2. Pursuant to a contract existing before July 2, 1987.
3. Pursuant to the laws of intestate succession or pursuant to a gift or testamentary transfer.
4. Pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this section.
5. Pursuant to a merger or share exchange effected in compliance with s. 607.1101, s. 607.1102, s. 607.1103, s. 607.1104, or s. 607.1107, if the issuing public corporation is a party to the agreement of merger or plan of share exchange.
6. Pursuant to any savings, employee stock ownership, or other employee benefit plan of the issuing public corporation or any of its subsidiaries or any fiduciary with respect to any such plan when acting in such fiduciary capacity.
7. Pursuant to an acquisition of shares of an issuing public corporation if the acquisition has been approved by the board of directors of such issuing public corporation before acquisition.

(e) The acquisition of shares of an issuing public corporation in good faith and not for the purpose of circumventing this section by or from:

1. Any person whose voting rights had previously been authorized by shareholders in compliance with this section; or
2. Any person whose previous acquisition of shares of an issuing public corporation would have

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constituted a control-share acquisition but for paragraph (d),  
does not constitute a control-share acquisition, unless the acquisition entitles any person, directly or indirectly, alone or as a part of a group, to exercise or direct the exercise of voting power of the corporation in the election of directors in excess of the range of the voting power otherwise authorized.

(f) For the purpose of this section, persons shall not be deemed to be part of a “group” if such persons join together to exercise or direct the exercise of the voting power of an issuing public corporation (whether through a voting trust, a shareholder agreement, or through other arrangements), and the voting trustee of any voting trust shall not be deemed to be an “acquiring person” if such persons or all the parties to the voting trust:

1. Are related by blood or marriage or are the personal representatives or trustees of such persons; and
2. Such persons were shareholders (or the beneficial owners of shares) of the issuing public corporation (or were trustees, personal representatives, or heirs of such shareholders or beneficial owners) on July 1, 1987, and have continued to be shareholders (or the beneficial owners of shares) of the issuing public corporation (or have been trustees, personal representatives, or heirs of such shareholders or beneficial owners) since that time.

(3) “INTERESTED SHARES.”—As used in this section, “interested shares” means the shares of an issuing public corporation in respect of which any of the following persons may exercise or direct the exercise of the voting power of the corporation in the election of directors:

- (a) An acquiring person or member of a group with respect to a control-share acquisition.
- (b) Any officer of the issuing public corporation.
- (c) Any employee of the issuing public corporation who is also a director of the corporation.

(4) “ISSUING PUBLIC CORPORATION.”—

- (a) As used in this section, “issuing public corporation” means a corporation that has:
  1. One hundred or more shareholders;

2. Its principal place of business, its principal office, or substantial assets within this state; and

3. Either:

- a. More than 10 percent of its shareholders resident in this state;
  - b. More than 10 percent of its shares owned by residents of this state; or
  - c. One thousand shareholders resident in this state.
- (b) The residence of a shareholder is presumed to be the address appearing in the records of the corporation.

(c) Shares held by banks (except as trustee or guardian), brokers, or nominees shall be disregarded for purposes of calculating the percentages or numbers described in this subsection.

(5) **LAW APPLICABLE TO CONTROL-SHARE VOTING RIGHTS.**—Unless the corporation’s articles of incorporation or bylaws provide that this section does not apply to control-share acquisitions of shares of the corporation before the control-share acquisition, control shares of an issuing public corporation acquired in a control-share acquisition have only such voting rights as are conferred by subsection (9).

(6) **NOTICE OF CONTROL-SHARE ACQUISITION.**—Any person who proposes to make or has made a control-share acquisition may at the person’s election deliver an acquiring person statement to the issuing public corporation at the issuing public corporation’s principal office. The acquiring person statement must set forth all of the following:

- (a) The identity of the acquiring person and each other member of any group of which the person is a part for purposes of determining control shares.
- (b) A statement that the acquiring person statement is given pursuant to this section.
- (c) The number of shares of the issuing public corporation owned, directly or indirectly, by the acquiring person and each other member of the group.
- (d) The range of voting power under which the control-share acquisition falls or would, if consummated, fall.
- (e) If the control-share acquisition has not taken place:

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1. A description in reasonable detail of the terms of the proposed control-share acquisition; and
2. Representations of the acquiring person, together with a statement, in reasonable detail of the facts upon which they are based, that the proposed control-share acquisition, if consummated, will not be contrary to law and that the acquiring person has the financial capacity to make the proposed control-share acquisition.

**(7) SHAREHOLDER MEETING TO DETERMINE CONTROL-SHARE VOTING RIGHTS.—**

- (a) If the acquiring person so requests at the time of delivery of an acquiring person statement and gives an undertaking to pay the corporation's expenses of a special meeting, within 10 days thereafter, the directors of the issuing public corporation or others authorized to call such a meeting under the issuing public corporation's articles of incorporation or bylaws shall call a special meeting of shareholders of the issuing public corporation for the purpose of considering the voting rights to be accorded the shares acquired or to be acquired in the control-share acquisition.
- (b) Unless the acquiring person agrees in writing to another date, the special meeting of shareholders shall be held within 50 days after receipt by the issuing public corporation of the request.
- (c) If the acquiring person so requests in writing at the time of delivery of the acquiring person statement, the special meeting must not be held sooner than 30 days after receipt by the issuing public corporation of the acquiring person statement.
- (d) If no request is made, the voting rights to be accorded the shares acquired in the control-share acquisition shall be presented to the next special or annual meeting of the shareholders.

**(8) NOTICE OF SHAREHOLDER MEETING.—**

- (a) If a special meeting is requested, notice of the special meeting of shareholders shall be given as promptly as reasonably practicable by the issuing public corporation to all shareholders of record as of the record date set for the meeting, whether or not entitled to vote at the meeting.
- (b) Notice of the special or annual shareholder meeting at which the voting rights are to be

considered must include or be accompanied by each of the following:

1. A copy of the acquiring person statement delivered to the issuing public corporation pursuant to this section.
2. A statement by the board of directors of the corporation, authorized by its directors, of its position or recommendation, or that it is taking no position or making no recommendation, with respect to the proposed control-share acquisition.

**(9) RESOLUTION GRANTING CONTROL-SHARE VOTING RIGHTS.—**

- (a) Control shares acquired in a control-share acquisition have the same voting rights as were accorded the shares before the control-share acquisition only to the extent granted by resolution approved by the shareholders of the issuing public corporation.
- (b) To be approved under this subsection, the resolution must be approved by:
1. Each class or series entitled to vote separately on the proposal by a majority of all the votes entitled to be cast by the class or series, with the holders of the outstanding shares of a class or series being entitled to vote as a separate class if the proposed control-share acquisition would, if fully carried out, result in any of the changes described in s. 607.1004; and
  2. Each class or series entitled to vote separately on the proposal by a majority of all the votes entitled to be cast by that group, excluding all interested shares.

(c) Any control shares that do not have voting rights because such rights were not accorded to such shares by approval of a resolution by the shareholders pursuant to paragraph (b) shall regain voting rights and shall no longer be deemed control shares upon a transfer to a person other than the acquiring person or associate or affiliate, as defined in s. 607.0901, of the acquiring person unless the acquisition of the shares by the other person constitutes a control-share acquisition, in which case the voting rights of the shares remain subject to the provisions of this section.

**(10) REDEMPTION OF CONTROL SHARES.—**

- (a) If authorized in a corporation's articles of incorporation or bylaws before a control-share

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acquisition has occurred, control shares acquired in a control-share acquisition with respect to which no acquiring person statement has been filed with the issuing public corporation may, at any time during the period ending 60 days after the last acquisition of control shares by the acquiring person, be subject to redemption by the corporation at the fair value thereof pursuant to the procedures adopted by the corporation.

(b) Control shares acquired in a control-share acquisition are not subject to redemption after an acquiring person statement has been filed unless the shares are not accorded full voting rights by the shareholders as provided in subsection (9).

### **607.1001 Authority to amend the articles of incorporation.—**

(1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

(2) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

### **607.1002 Amendment by board of directors.—**

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

- (1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;
- (2) To delete the names and addresses of the initial directors;
- (3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Department of State;

(4) To delete any other information contained in the articles of incorporation that is solely of historical interest;

(5) To delete the authorization for a class or series of shares authorized pursuant to s. 607.0602, if no shares of such class or series are issued;

(6) To change the corporate name by substituting the word "corporation," "incorporated," or "company," or the abbreviation "corp.," "Inc.," or "Co.," for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name;

(7) To change the par value for a class or series of shares;

(8) To provide that if the corporation acquires its own shares, such shares belong to the corporation and constitute treasury shares until disposed of or canceled by the corporation; or

(9) To make any other change expressly permitted by this act to be made without shareholder action.

### **607.10025 Shares; combination or division.—**

(1) A corporation may effect a division or combination of its shares in the manner as provided in this section. For purposes of this section, the terms "division" and "combination" mean dividing or combining shares of any issued and outstanding class or series into a greater or lesser number of shares of the same class or series.

(2) Unless the articles of incorporation provide otherwise, a division or combination may be effected solely by the action of the board of directors. In effecting a share combination or division, the board shall have authority to amend the articles to:

- (a) Increase or decrease the par value of shares;
- (b) Increase or decrease the number of authorized shares; or
- (c) Make any other changes necessary or appropriate to assure that the rights or preferences of each holder of outstanding shares of all classes and series will not be adversely affected by the combination or division.

The board shall not have the authority to amend the articles, and shareholder approval of any amendment shall be required pursuant to s. 607.1003, if, as a result of the amendment, the

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rights or preferences of the holders of any outstanding class or series will be adversely affected, or the percentage of authorized shares remaining unissued after the share division or combination will exceed the percentage of authorized shares that was unissued before the division or combination.

(3) Fractional shares created by a division or combination effected under this section may not be redeemed for cash under s. 607.0604.

(4) If a division or combination is effected by a board action without shareholder approval and includes an amendment to the articles of incorporation, there shall be executed in accordance with s. 607.0120 on behalf of the corporation and filed in the office of the Department of State articles of amendment which shall set forth:

(a) The name of the corporation.

(b) The date of adoption by the board of directors of the resolution approving the division or combination.

(c) That the amendment to the articles of incorporation does not adversely affect the rights or preferences of the holders of outstanding shares of any class or series and does not result in the percentage of authorized shares that remain unissued after the division or combination exceeding the percentage of authorized shares that were unissued before the division or combination.

(d) The class or series and number of shares subject to the division or combination and the number of shares into which the shares are to be divided or combined.

(e) The amendment of the articles of incorporation made in connection with the division or combination.

(f) If the division or combination is to become effective at a time subsequent to the time of filing, the date, which may not exceed 90 days after the date of filing, when the division or combination becomes effective.

(5) Within 30 days after effecting a division or combination without shareholder approval, the corporation shall give written notice to its shareholders setting forth the material terms of the division or combination.

(6) If a division or combination is effected by action of the board and of the shareholders, there shall be executed on behalf of the corporation and filed with the Department of State articles of amendment as provided in s. 607.1003, which articles shall set forth, in addition to the information required by s. 607.1003, the information required in subsection (4).

(7) Upon the effectiveness of a combination, the authorized shares of the classes or series affected by the combination shall be reduced by the same percentage by which the issued shares of such class or series were reduced as a result of the combination, unless the articles of incorporation otherwise provide or the combination was approved by the shareholders pursuant to s. 607.1003.

(8) This section applies only to corporations with more than 35 shareholders of record.

### **607.1003 Amendment by board of directors and shareholders.—**

(1) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(2) For the amendment to be adopted:

(a) The board of directors must recommend the amendment to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and

(b) The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (5).

(3) The board of directors may condition its submission of the proposed amendment on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with s. 607.0705. The notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(5) Unless this act, the articles of incorporation, or the board of directors (acting pursuant to subsection (3)) requires a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

(a) A majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and

(b) The votes required by ss. 607.0725 and 607.0726 by every other voting group entitled to vote on the amendment.

(6) Unless otherwise provided in the articles of incorporation, the shareholders of a corporation having 35 or fewer shareholders may amend the articles of incorporation without an act of the directors at a meeting for which notice of the changes to be made is given.

**607.1004 Voting on amendments by voting groups.—**

(1) The holders of the outstanding shares of a class are entitled to vote as a class (if shareholder voting is otherwise required by this act) upon a proposed amendment, if the amendment would:

(a) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class.

(b) Effect an exchange or reclassification, or create a right of exchange, of all or part of the shares of another class into the shares of the class.

(c) Change the designation, rights, preferences, or limitations of all or part of the shares of the class.

(d) Change the shares of all or part of the class into a different number of shares of the same class.

(e) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class.

(f) Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class.

(g) Limit or deny an existing preemptive right of all or part of the shares of the class.

(h) Cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

(2) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (1), the shares of that series are entitled to vote as a separate class on the proposed amendment.

(3) If a proposed amendment that entitles the holders of two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or substantially similar way, the holders of the shares of all the classes or series so affected must vote together as a single voting group on the proposed amendment, unless otherwise provided in the articles of incorporation.

(4) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

**607.1005 Amendment before issuance of shares.—**If a corporation has not yet issued shares, a majority of its incorporators or board of directors may adopt one or more amendments to the corporation's articles of incorporation.

**607.1006 Articles of amendment.—**A corporation amending its articles of incorporation shall deliver to the Department of State for filing articles of amendment which shall be executed in accordance with s. 607.0120 and which shall set forth:

(1) The name of the corporation;

(2) The text of each amendment adopted;

(3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;

(4) The date of each amendment's adoption;

(5) If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required;

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(6) If an amendment was approved by the shareholders, a statement that the number of votes cast for the amendment by the shareholders was sufficient for approval and if more than one voting group was entitled to vote on the amendment, a statement designating each voting group entitled to vote separately on the amendment, and a statement that the number of votes cast for the amendment by the shareholders in each voting group was sufficient for approval by that voting group.

**607.1007 Restated articles of incorporation.—**

(1) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action.

(2) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it must be adopted as provided in s. 607.1003.

(3) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with s. 607.0705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.

(4) A corporation restating its articles of incorporation shall execute and deliver to the Department of State for filing articles of restatement, that comply with the provisions of s. 607.0120, and to the extent applicable, s. 607.0202, setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(a) Whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or

(b) If the restatement contains an amendment to the articles requiring shareholder approval, the information required by s. 607.1006.

(5) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(6) The Department of State may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (4).

**607.1008 Amendment pursuant to reorganization.—**

(1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under any federal or Florida statute if the articles of incorporation after amendment contain only provisions required or permitted by s. 607.0202.

(2) The individual or individuals designated by the court shall deliver to the Department of State for filing articles of amendment setting forth:

(a) The name of the corporation;

(b) The text of each amendment approved by the court;

(c) The date of the court's order or decree approving the articles of amendment;

(d) The title of the reorganization proceeding in which the order or decree was entered; and

(e) A statement that the court had jurisdiction of the proceeding under a federal or Florida statute.

(3) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except as and to the extent provided in the reorganization plan.

(4) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

**607.1009 Effect of amendment.—**An

amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation.

An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

**607.1020 Amendment of bylaws by board of directors or shareholders.—**

(1) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(a) The articles of incorporation or this act reserves the power to amend the bylaws generally or a particular bylaw provision exclusively to the shareholders; or

(b) The shareholders, in amending or repealing the bylaws generally or a particular bylaw provision, provide expressly that the board of directors may not amend or repeal the bylaws or that bylaw provision.

(2) A corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors.

**607.1021 Bylaw increasing quorum or voting requirements for shareholders.—**

(1) If authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is required by this act. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

(2) A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection (1) may not be adopted, amended, or repealed by the board of directors.

**607.1022 Bylaw increasing quorum or voting requirements for directors.—**

(1) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

(a) If originally adopted by the shareholders, only by the shareholders;

(b) If originally adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(3) Action by the board of directors under paragraph (1)(b) to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

**607.1101 Merger.—**

(1) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders (if required by s. 607.1103) approve a plan of merger.

(2) The plan of merger shall set forth:

(a) The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge, which is hereinafter designated as the surviving corporation;

(b) The terms and conditions of the proposed merger; and

(c) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving corporation or any other corporation or, in whole or in part, into cash or other property and the manner and basis of converting rights to acquire shares of each corporation into rights to acquire shares, obligations, or other securities of the surviving or any other corporation or, in whole or in part, into cash or other property.

(3) The plan of merger may set forth:

(a) Amendments to, or a restatement of, the articles of incorporation of the surviving corporation;

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- (b) The effective date of the merger, which may be on or after the date of filing the certificate; and
- (c) Other provisions relating to the merger.

**607.1102 Share exchange.—**

- (1) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders (if required by s. 607.1103) approve a plan of share exchange.
- (2) The plan of share exchange shall set forth:
  - (a) The name of the corporation the shares of which will be acquired and the name of the acquiring corporation;
  - (b) The terms and conditions of the exchange;
  - (c) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or, in whole or in part, for cash or other property, and the manner and basis of exchanging rights to acquire shares of the corporation to be acquired for rights to acquire shares, obligations, or, in whole or in part, other securities of the acquiring or any other corporation or, in whole or in part, for cash or other property.
- (3) The plan of share exchange may set forth other provisions relating to the exchange.
- (4) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

**607.1103 Action on plan.—**

- (1) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation the shares of which will be acquired in the share exchange, shall submit the plan of merger (except as provided in subsection (7)) or the plan of share exchange for approval by its shareholders.
- (2) For a plan of merger or share exchange to be approved:
  - (a) The board of directors must recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that it should make no recommendation

- because of conflict of interest or other special circumstances and communicates the basis for its determination to the shareholders with the plan; and
- (b) The shareholders entitled to vote must approve the plan as provided in subsection (5).
- (3) The board of directors may condition its submission of the proposed merger or share exchange on any basis.
- (4) The corporation the shareholders of which are entitled to vote on the matter shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with s. 607.0705. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange, regardless of whether or not the meeting is an annual or a special meeting, and contain or be accompanied by a copy or summary of the plan. Furthermore, the notice shall contain a clear and concise statement that, if the plan of merger or share exchange is effected, shareholders dissenting therefrom may be entitled, if they comply with the provisions of this act regarding appraisal rights, to be paid the fair value of their shares, and shall be accompanied by a copy of ss. 607.1301-607.1333.
- (5) Unless this act, the articles of incorporation, or the board of directors (acting pursuant to subsection (3)) requires a greater vote or a vote by classes, the plan of merger or share exchange to be authorized shall be approved by each class entitled to vote on the plan by a majority of all the votes entitled to be cast on the plan by that class.
- (6) Voting by a class or series as a separate voting group is required:
  - (a) On a plan of merger if the plan contains a provision which, if contained in a proposed amendment to articles of incorporation, would entitle the class or series to vote as a separate voting group on the proposed amendment under s. 607.1004; or
  - (b) On a plan of share exchange if the shares of such class or series of shares are to be converted or exchanged under such plan or if the plan contains any provisions which, if contained in a proposed amendment to articles of incorporation, would entitle the class or series to vote as a separate voting

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group on the proposed amendment under s. 607.1004.

(7) Notwithstanding the requirements of this section, unless required by its articles of incorporation, action by the shareholders of the surviving corporation on a plan of merger is not required if:

- (a) The articles of incorporation of the surviving corporation will not differ (except for amendments enumerated in s. 607.1002) from its articles before the merger; and
- (b) Each shareholder of the surviving corporation whose shares were outstanding immediately prior to the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger.

(8) Any plan of merger or share exchange may authorize the board of directors of each corporation party to the merger or share exchange to amend the plan at any time prior to the filing of the articles of merger or share exchange. An amendment made subsequent to the approval of the plan by the shareholders of any corporation party to the merger or share exchange may not:

- (a) Change the amount or kind of shares, securities, cash, property, or rights to be received in exchange for or on conversion of any or all of the shares of any class or series of such corporation;
- (b) Change any other terms and conditions of the plan if such change would materially and adversely affect such corporation or the holders of the shares of any class or series of such corporation; or
- (c) Except as specified in s. 607.1002 or without the vote of shareholders entitled to vote on the matter, change any term of the articles of incorporation of any corporation the shareholders of which must approve the plan of merger or share exchange.

If articles of merger or share exchange already have been filed with the Department of State, amended articles of merger or share exchange shall be filed with the Department of State prior to the effective date of the merger or share exchange.

(9) Unless a plan of merger or share exchange prohibits abandonment of the merger or share exchange without shareholder approval after a

merger or share exchange has been authorized, the planned merger or share exchange may be abandoned (subject to any contractual rights) at any time prior to the filing of articles of merger or share exchange by any corporation party to the merger or share exchange, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors of such corporation.

**607.1104 Merger of subsidiary corporation.—**

(1)(a) A parent corporation owning at least 80 percent of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself, may merge itself into the subsidiary, or may merge the subsidiary into and with another subsidiary in which the parent corporation owns at least 80 percent of the outstanding shares of each class of the subsidiary without the approval of the shareholders of the parent or subsidiary. In a merger of a parent corporation into its subsidiary corporation, the approval of the shareholders of the parent corporation shall be required if the articles of incorporation of the surviving corporation will differ, except for amendments enumerated in s. 607.1002, from the articles of incorporation of the parent corporation before the merger, and the required vote shall be the greater of the vote required to approve the merger and the vote required to adopt each change to the articles of incorporation as if each change had been presented as an amendment to the articles of incorporation of the parent corporation.

(b) The board of directors of the parent shall adopt a plan of merger that sets forth:

1. The names of the parent and subsidiary corporations;
2. The manner and basis of converting the shares of the subsidiary or parent into shares, obligations, or other securities of the parent or any other corporation or, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire shares of each corporation into rights to acquire shares, obligations, and other securities of the surviving or

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any other corporation or, in whole or in part, into cash or other property;

3. If the merger is between the parent and a subsidiary corporation and the parent is not the surviving corporation, a provision for the pro rata issuance of shares of the subsidiary to the holders of the shares of the parent corporation upon surrender of any certificates therefor; and

4. A clear and concise statement that shareholders of the subsidiary who, except for the applicability of this section, would be entitled to vote and who dissent from the merger pursuant to s. 607.1321, may be entitled, if they comply with the provisions of this act regarding appraisal rights, to be paid the fair value of their shares.

(2) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(3) The parent may not deliver articles of merger to the Department of State for filing until at least 30 days after the date it mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement, or, if earlier, upon the waiver thereof by the holders of all of the outstanding shares of the subsidiary.

(4) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation (except for amendments enumerated in s. 607.1002).

(5) Two or more subsidiaries may be merged into the parent pursuant to this section.

**607.11045 Holding company formation by merger by certain corporations.—**

(1) This section applies only to a corporation that has shares of any class or series which are either registered on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or held of record by not fewer than 2,000 shareholders.

(2) As used in this section, the term:

(a) “Constituent corporation” means a corporation that is a party to a merger governed by this section.

(b) “Holding company” means a corporation that, from the date it first issued shares until

consummation of a merger governed by this section, was at all times a wholly owned subsidiary of a constituent corporation, and whose shares are issued in such merger.

(c) “Wholly owned subsidiary” means, as to a corporation, any other corporation of which it owns, directly or indirectly through one or more subsidiaries, all of the issued and outstanding shares.

(3) Notwithstanding the requirements of s. 607.1103, unless expressly required by its articles of incorporation, no vote of shareholders of a corporation is necessary to authorize a merger of the corporation with or into a wholly owned subsidiary of such corporation if:

(a) Such corporation and wholly owned subsidiary are the only constituent corporations to the merger;

(b) Each share or fraction of a share of the constituent corporation whose shares are being converted pursuant to the merger which are outstanding immediately prior to the effective date of the merger is converted in the merger into a share or equal fraction of share of a holding company having the same designations, rights, powers and preferences, and qualifications, limitations and restrictions thereof as the share of the constituent corporation being converted in the merger;

(c) The holding company and each of the constituent corporations to the merger are domestic corporations;

(d) The articles of incorporation and bylaws of the holding company immediately following the effective date of the merger contain provisions identical to the articles of incorporation and bylaws of the constituent corporation whose shares are being converted pursuant to the merger immediately prior to the effective date of the merger, except provisions regarding the incorporators, the corporate name, the registered office and agent, the initial board of directors, the initial subscribers for shares and matters solely of historical significance, and such provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification, or cancellation of shares, if such change, exchange, reclassification, or cancellation has become effective;

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(e) As a result of the merger, the constituent corporation whose shares are being converted pursuant to the merger or its successor corporation becomes or remains a direct or indirect wholly owned subsidiary of the holding company;

(f) The directors of the constituent corporation become or remain the directors of the holding company upon the effective date of the merger;

(g) The articles of incorporation of the surviving corporation immediately following the effective date of the merger are identical to the articles of incorporation of the constituent corporation whose shares are being converted pursuant to the merger immediately prior to the effective date of the merger, except provisions regarding the incorporators, the corporate name, the registered office and agent, the initial board of directors, the initial subscribers for shares and matters solely of historical significance, and such provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification, or cancellation of shares, if such change, exchange, reclassification, or cancellation has become effective. The articles of incorporation of the surviving corporation must be amended in the merger to contain a provision requiring, by specific reference to this section, that any act or transaction by or involving the surviving corporation which requires for its adoption under this act or its articles of incorporation the approval of the shareholders of the surviving corporation also be approved by the shareholders of the holding company, or any successor by merger, by the same vote as is required by this act or the articles of incorporation of the surviving corporation. The articles of incorporation of the surviving corporation may be amended in the merger to reduce the number of classes and shares which the surviving corporation is authorized to issue;

(h) The board of directors of the constituent corporation determines that the shareholders of the constituent corporation will not recognize gain or loss for United States federal income tax purposes; and

(i) The board of directors of such corporation adopts a plan of merger that sets forth:

1. The names of the constituent corporations;

2. The manner and basis of converting the shares of the corporation into shares of the holding company and the manner and basis of converting rights to acquire shares of such corporation into rights to acquire shares of the holding company; and
3. A provision for the pro rata issuance of shares of the holding company to the holders of shares of the corporation upon surrender of any certificates therefor.

(4) From and after the effective time of a merger adopted by a constituent corporation by action of its board of directors and without any vote of shareholders pursuant to this section:

- (a) To the extent the restrictions of ss. 607.0901 and 607.0902 applied to the constituent corporation and its shareholders at the effective time of the merger, such restrictions also apply to the holding company and its shareholders immediately after the effective time of the merger as though it were the constituent corporation, and all shares of the holding company acquired in the merger shall, for purposes of ss. 607.0901 and 607.0902, be deemed to have been acquired at the time that the shares of the constituent corporation converted in the merger were acquired, and provided further that any shareholder who immediately prior to the effective time of the merger was not an interested shareholder within the meaning of s. 607.0901 shall not, solely by reason of the merger, become an interested shareholder of the holding company; and
- (b) If the corporate name of the holding company immediately following the effective time of the merger is the same as the corporate name of the constituent corporation immediately prior to the effective time of the merger, the shares of the holding company into which the shares of the constituent corporation are converted in the merger shall be represented by the share certificates that previously represented shares of the constituent corporation.

(5) If a plan of merger is adopted by a constituent corporation by selection of its board of directors without any vote of shareholders pursuant to this section, the secretary or assistant secretary of the constituent corporation shall certify in the articles of merger that the plan of merger has been adopted pursuant to this section and that the conditions

specified in subsection (3) have been satisfied. The articles of merger so certified shall then be filed and become effective in accordance with s. 607.1106.

**607.1105 Articles of merger or share exchange.—**

(1) After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the Department of State for filing articles of merger or share exchange which shall be executed by each corporation as required by s. 607.0120 and which shall set forth:

- (a) The plan of merger or share exchange;
- (b) The effective date of the merger or share exchange, which may be on or after the date of filing the articles of merger or share exchange; if the articles of merger or share exchange do not provide for an effective date of the merger or share exchange, then the effective date shall be the date on which the articles of merger or share exchange are filed;
- (c) If shareholder approval was not required, a statement to that effect; and
- (d) As to each corporation, to the extent applicable, the date of adoption of the plan of merger or share exchange by the shareholders or by the board of directors when no vote of the shareholders is required.

(2) A copy of the articles of merger or share exchange, certified by the Department of State, may be filed in the office of the official who is the recording officer of each county in this state in which real property of a constituent corporation other than the surviving corporation is situated.

**607.1106 Effect of merger or share exchange.—**

- (1) When a merger becomes effective:
  - (a) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;
  - (b) The title to all real estate and other property, or any interest therein, owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;

(c) The surviving corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each corporation party to the merger;

(d) Any claim existing or action or proceeding pending by or against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation which ceased existence;

(e) Neither the rights of creditors nor any liens upon the property of any corporation party to the merger shall be impaired by such merger;

(f) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(g) The shares (and the rights to acquire shares, obligations, or other securities) of each corporation party to the merger that are to be converted into shares, rights, obligations, or other securities of the surviving or any other corporation or into cash or other property are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under s. 607.1302.

(2) When a share exchange becomes effective, the shares of each acquired corporation are exchanged as provided in the plan of exchange, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under s. 607.1302.

**607.1107 Merger or share exchange with foreign corporations.—**

(1) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(a) In a merger, the merger is permitted by the law of the state or country under the law of which each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(b) In a share exchange, the corporation the shares of which will be acquired is a domestic corporation, whether or not a share exchange is permitted by law of the state or country under the law of which the acquiring corporation is incorporated;

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(c) The foreign corporation complies with s. 607.1105 if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(d) Each domestic corporation complies with the applicable provisions of ss. 607.1101-607.1104 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with s. 607.1105.

(2) Upon the merger becoming effective, the surviving foreign corporation of a merger, and the acquiring foreign corporation in a share exchange, is deemed:

(a) To appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

(b) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under s. 607.1302.

(3) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

(4) The effect of such merger shall be the same as in the case of the merger of domestic corporations if the surviving corporation is to be governed by the laws of this state. If the surviving corporation is to be governed by the laws of any state other than this state, the effect of such merger shall be the same as in the case of the merger of domestic corporations except insofar as the laws of such other state provide otherwise.

(5) The redomestication of a foreign insurer to this state under s. 628.520 shall be deemed a merger of a foreign corporation and a domestic corporation, and the surviving corporation shall be deemed to be a domestic corporation incorporated under the laws of this state. The redomestication of a Florida corporation to a foreign jurisdiction under s. 628.525 shall be deemed a merger of a domestic corporation and a foreign corporation, and the

surviving corporation shall be deemed to be a foreign corporation.

**607.1108 Merger of domestic corporation and other business entity.—**

(1) As used in this section and ss. 607.1109 and 607.11101, the term “other business entity” means a limited liability company, a foreign corporation, a not-for-profit corporation, a business trust or association, a real estate investment trust, a common law trust, an unincorporated business, a general partnership, a limited partnership, or any other entity that is formed pursuant to the requirements of applicable law. Notwithstanding the provisions of chapter 617, a domestic not-for-profit corporation acting under a plan of merger approved pursuant to s. 617.1103 shall be governed by the provisions of ss. 607.1108, 607.1109, and 607.11101.

(2) Pursuant to a plan of merger complying and approved in accordance with this section, one or more domestic corporations may merge with or into one or more other business entities formed, organized, or incorporated under the laws of this state or any other state, the United States, foreign country, or other foreign jurisdiction, if:

(a) Each domestic corporation which is a party to the merger complies with the applicable provisions of this chapter.

(b) Each domestic partnership that is a party to the merger complies with the applicable provisions of chapter 620.

(c) Each domestic limited liability company that is a party to the merger complies with the applicable provisions of chapter 608.

(d) The merger is permitted by the laws of the state, country, or jurisdiction under which each other business entity that is a party to the merger is formed, organized, or incorporated and each such other business entity complies with such laws in effecting the merger.

(3) The plan of merger shall set forth:

(a) The name of each domestic corporation and the name and jurisdiction of formation, organization, or incorporation of each other business entity planning to merge, and the name of the surviving or resulting domestic corporation or other business entity into which each other domestic

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corporation or other business entity plans to merge, which is hereinafter and in ss. 607.1109 and 607.11101 designated as the surviving entity.

(b) The terms and conditions of the merger.

(c) The manner and basis of converting the shares of each domestic corporation that is a party to the merger and the partnership interests, interests, shares, obligations or other securities of each other business entity that is a party to the merger into partnership interests, interests, shares, obligations or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire the shares of each domestic corporation that is a party to the merger and rights to acquire partnership interests, interests, shares, obligations or other securities of each other business entity that is a party to the merger into rights to acquire partnership interests, interests, shares, obligations or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property.

(d) If a partnership is to be the surviving entity, the names and business addresses of the general partners of the surviving entity.

(e) If a limited liability company is to be the surviving entity and management thereof is vested in one or more managers, the names and business addresses of such managers.

(f) All statements required to be set forth in the plan of merger by the laws under which each other business entity that is a party to the merger is formed, organized, or incorporated.

(4) The plan of merger may set forth:

(a) If a domestic corporation is to be the surviving entity, any amendments to, or a restatement of, the articles of incorporation of the surviving entity, and such amendments or restatement shall be effective at the effective date of the merger.

(b) The effective date of the merger, which may be on or after the date of filing the certificate of merger.

(c) Any other provisions relating to the merger.

(5) The plan of merger required by subsection (3) shall be adopted and approved by each domestic corporation that is a party to the merger in the same

manner as is provided in s. 607.1103.

Notwithstanding the foregoing, if the surviving entity is a partnership, no shareholder of a domestic corporation that is a party to the merger shall, as a result of the merger, become a general partner of the surviving entity, unless such shareholder specifically consents in writing to becoming a general partner of the surviving entity, and unless such written consent is obtained from each such shareholder who, as a result of the merger, would become a general partner of the surviving entity, such merger shall not become effective under s. 607.11101. Any shareholder providing such consent in writing shall be deemed to have voted in favor of the plan of merger for purposes of s. 607.1103.

(6) Sections 607.1103 and 607.1301-607.1333 shall, insofar as they are applicable, apply to mergers of one or more domestic corporations with or into one or more other business entities.

(7) Notwithstanding any provision of this section or ss. 607.1109 and 607.11101, any merger consisting solely of the merger of one or more domestic corporations with or into one or more foreign corporations shall be consummated solely in accordance with the requirements of s. 607.1107.

### **607.1109 Articles of merger.—**

(1) After a plan of merger is approved by each domestic corporation and other business entity that is a party to the merger, the surviving entity shall deliver to the Department of State for filing articles of merger, which shall be executed by each domestic corporation as required by s. 607.0120 and by each other business entity as required by applicable law, and which shall set forth:

(a) The plan of merger.

(b) A statement that the plan of merger was approved by each domestic corporation that is a party to the merger in accordance with the applicable provisions of this chapter, and, if applicable, a statement that the written consent of each shareholder of such domestic corporation who, as a result of the merger, becomes a general partner of the surviving entity has been obtained pursuant to s. 607.1108(5).

(c) A statement that the plan of merger was approved by each domestic partnership that is a

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party to the merger in accordance with the applicable provisions of chapter 620.

(d) A statement that the plan of merger was approved by each domestic limited liability company that is a party to the merger in accordance with the applicable provisions of chapter 608.

(e) A statement that the plan of merger was approved by each other business entity that is a party to the merger, other than domestic corporations, limited liability companies, and partnerships formed, organized, or incorporated under the laws of this state, in accordance with the applicable laws of the state, country, or jurisdiction under which such other business entity is formed, organized, or incorporated.

(f) The effective date of the merger, which may be on or after the date of filing the articles of merger, provided, if the articles of merger do not provide for an effective date of the merger, the effective date shall be the date on which the articles of merger are filed.

(g) If the surviving entity is another business entity formed, organized, or incorporated under the laws of any state, country, or jurisdiction other than this state:

1. The address, including street and number, if any, of its principal office under the laws of the state, country, or jurisdiction in which it was formed, organized, or incorporated.
2. A statement that the surviving entity is deemed to have appointed the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation that is a party to the merger.
3. A statement that the surviving entity has agreed to promptly pay to the dissenting shareholders of each domestic corporation that is a party to the merger the amount, if any, to which they are entitled under s. 607.1302.

(2) A copy of the articles of merger, certified by the Department of State, may be filed in the office of the official who is the recording officer of each county in this state in which real property of a party to the merger other than the surviving entity is situated.

(3) A domestic corporation is not required to file articles of merger pursuant to subsection (1) if the domestic corporation is named as a party or constituent organization in articles of merger or a certificate of merger filed for the same merger in accordance with s. 608.4382(1), s. 617.1108, s. 620.2108(3), or s. 620.8918(1) and (2), and if the articles of merger or certificate of merger substantially complies with the requirements of this section. In such a case, the other articles of merger or certificate of merger may also be used for purposes of subsection (2).

**607.11101 Effect of merger of domestic corporation and other business entity.**—When a merger becomes effective:

(1) Every domestic corporation and other business entity that is a party to the merger merges into the surviving entity and the separate existence of every domestic corporation and other business entity that is a party to the merger except the surviving entity ceases.

(2) The title to all real estate and other property, or any interest therein, owned by each domestic corporation and other business entity that is a party to the merger is vested in the surviving entity without reversion or impairment.

(3) The surviving entity shall thereafter be responsible and liable for all the liabilities and obligations of each domestic corporation and other business entity that is a party to the merger, including liabilities arising out of appraisal rights with respect to such merger under applicable law.

(4) Any claim existing or action or proceeding pending by or against any domestic corporation or other business entity that is a party to the merger may be continued as if the merger did not occur or the surviving entity may be substituted in the proceeding for the domestic corporation or other business entity which ceased existence.

(5) Neither the rights of creditors nor any liens upon the property of any domestic corporation or other business entity shall be impaired by such merger.

(6) If a domestic corporation is the surviving entity, the articles of incorporation of such corporation in effect immediately prior to the time

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the merger becomes effective shall be the articles of incorporation of the surviving entity, except as amended or restated to the extent provided in the plan of merger.

(7) The shares, partnership interests, interests, obligations, or other securities, and the rights to acquire shares, partnership interests, interests, obligations, or other securities, of each domestic corporation and other business entity that is a party to the merger shall be converted into shares, partnership interests, interests, obligations, or other securities, or rights to such securities, of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property as provided in the plan of merger, and the former holders of shares, partnership interests, interests, obligations, or other securities, or rights to such securities, shall be entitled only to the rights provided in the plan of merger and to their appraisal rights, if any, under ss. 607.1301-607.1333, ss. 608.4351-608.43595, ss. 620.2114-620.2124, or other applicable law.

**607.1112 Conversion of domestic corporation into another business entity.—**

(1) As used in this section and ss. 607.1113 and 607.1114, the term “another business entity” or “other business entity” means a limited liability company; a common law or business trust or association; a real estate investment trust; a general partnership, including a limited liability partnership; a limited partnership, including a limited liability limited partnership; or any other domestic or foreign entity that is organized under a governing law or other applicable law, provided such term shall not include a corporation and shall not include any entity that has not been organized for profit.

(2) Pursuant to a plan of conversion complying with and approved in accordance with this section, a domestic corporation may convert to another business entity organized under the laws of this state or any other state, the United States, a foreign country, or other foreign jurisdiction, if:

(a) The domestic corporation converting to the other business entity complies with the applicable provisions of this chapter.

(b) The conversion is permitted by the laws of the jurisdiction that enacted the applicable laws under which the other business entity is governed and the other business entity complies with such laws in effecting the conversion.

(3) The plan of conversion shall set forth:

(a) The name of the domestic corporation and the name and jurisdiction of organization of the other business entity to which the domestic corporation is to be converted.

(b) The terms and conditions of the conversion, including the manner and basis of converting the shares, obligations, or other securities, or rights to acquire shares, obligations, or other securities, of the domestic corporation into the partnership interests, limited liability company interests, obligations, or other securities of the other business entity, including any rights to acquire any such interests, obligations, or other securities, or, in whole or in part, into cash or other consideration.

(c) All statements required to be set forth in the plan of conversion by the laws under which the other business entity is governed.

(4) The plan of conversion shall include, or have attached to it, the articles, certificate, registration, or other organizational document by which the other business entity has been or will be organized under its governing laws.

(5) The plan of conversion may also set forth any other provisions relating to the conversion.

(6) The plan of conversion shall be adopted and approved by the board of directors and shareholders of a domestic corporation in the same manner as a merger of a domestic corporation under s. 607.1103. Notwithstanding such requirement, if the other business entity is a partnership or limited partnership, no shareholder of the converting domestic corporation shall, as a result of the conversion, become a general partner of the partnership or limited partnership, unless such shareholder specifically consents in writing to becoming a general partner of such partnership or limited partnership and, unless such written consent is obtained from each such shareholder, such conversion shall not become effective under s. 607.1114. Any shareholder providing such consent in writing shall be deemed to have voted in favor of

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the plan of conversion pursuant to which the shareholder became a general partner.

(7) Section 607.1103 and ss. 607.1301-607.1333 shall, insofar as they are applicable, apply to a conversion of a domestic corporation into another business entity in accordance with this chapter.

### **607.1113 Certificate of conversion.—**

(1) After a plan of conversion is approved by the board of directors and shareholders of a converting domestic corporation, such corporation shall deliver to the Department of State for filing a certificate of conversion which shall be executed by the domestic corporation as required by s. 607.0120 and shall set forth:

(a) A statement that the domestic corporation has been converted into another business entity in compliance with this chapter and that the conversion complies with the applicable laws governing the other business entity.

(b) A statement that the plan of conversion was approved by the converting domestic corporation in accordance with this chapter and, if applicable, a statement that the written consent of each shareholder of such domestic corporation who, as a result of the conversion, becomes a general partner of the surviving entity has been obtained pursuant to s. 607.1112(6).

(c) The effective date of the conversion, which, subject to the limitations in s. 607.0123(2), may be on or after the date of filing the certificate of conversion but shall not be different than the effective date of the conversion under the laws governing the other business entity into which the domestic corporation has been converted.

(d) The address, including street and number, if any, of the principal office of the other business entity under the laws of the state, country, or jurisdiction in which such other business entity was organized.

(e) If the other business entity is a foreign entity and is not authorized to transact business in this state, a statement that the other business entity appoints the Secretary of State as its agent for service of process in a proceeding to enforce obligations of the converting domestic corporation, including any appraisal rights of shareholders of the

converting domestic corporation under ss.

607.1301-607.1333 and the street and mailing address of an office which the Department of State may use for purposes of s. 607.1114(4).

(f) A statement that the other business entity has agreed to pay any shareholders having appraisal rights the amount to which they are entitled under ss. 607.1301-607.1333.

(2) A copy of the certificate of conversion, certified by the Department of State, may be filed in the official records of any county in this state in which the converting domestic corporation holds an interest in real property.

(3) A converting domestic corporation is not required to file a certificate of conversion pursuant to subsection (1) if the converting domestic corporation files a certificate of conversion that substantially complies with the requirements of this section pursuant to s. 608.439, s. 620.2104(1)(b), or s. 620.8914(1)(b) and contains the signatures required by this chapter. In such a case, the other certificate of conversion may also be used for purposes of subsection (2).

### **607.1114 Effect of conversion of domestic corporation into another business entity.—**When a conversion becomes effective:

(1) A domestic corporation that has been converted into another business entity pursuant to this chapter is for all purposes the same entity that existed before the conversion.

(2) The title to all real property and other property, or any interest therein, owned by the domestic corporation at the time of its conversion into the other business entity remains vested in the converted entity without reversion or impairment by operation of this chapter.

(3) The other business entity into which the domestic corporation was converted shall continue to be responsible and liable for all the liabilities and obligations of the converting domestic corporation, including liability to any shareholders having appraisal rights under ss. 607.1301-607.1333 with respect to such conversion.

(4) Any claim existing or action or proceeding pending by or against any domestic corporation that is converted into another business entity may be

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continued as if the conversion did not occur. If the converted entity is a foreign entity, it shall be deemed to have consented to the jurisdiction of the courts of this state to enforce any obligation of the converting domestic corporation if, before the conversion, the converting domestic corporation was subject to suit in this state on the obligation. A converted entity that is a foreign entity and not authorized to transact business in this state shall appoint the Department of State as its agent for service of process for purposes of enforcing an obligation under this subsection, including any appraisal rights of shareholders under ss. 607.1301-607.1333 to the extent applicable to the conversion. Service on the Department of State under this subsection shall be made in the same manner and with the same consequences as under s. 48.181.

(5) Neither the rights of creditors nor any liens upon the property of a domestic corporation that is converted into another business entity under this chapter shall be impaired by such conversion.

(6) The shares, obligations, and other securities, or rights to acquire shares, obligations, or other securities, of the domestic corporation shall be converted into the partnership interests, limited liability company interests, obligations, or other securities of the other business entity, including any rights to acquire any such interests, obligations, or other securities, or, in whole or in part, into cash, or other consideration, as provided in the plan of conversion. The former shareholders of the converting domestic corporation shall be entitled only to the rights provided in the plan of conversion and to their appraisal rights, if any, under ss. 607.1301-607.1333 or other applicable law.

### **607.1115 Conversion of another business entity to a domestic corporation.—**

(1) As used in this section, the term “other business entity” means a limited liability company; a common law or business trust or association; a real estate investment trust; a general partnership, including a limited liability partnership; a limited partnership, including a limited liability limited partnership; or any other domestic or foreign entity that is organized under a governing law or other applicable law, provided such term shall not include

a corporation and shall not include any entity that has not been organized for profit.

(2) Any other business entity may convert to a domestic corporation if the conversion is permitted by the laws of the jurisdiction that enacted the applicable laws governing the other business entity and the other business entity complies with such laws and the requirements of this section in effecting the conversion. The other business entity shall file with the Department of State in accordance with s. 607.0120:

(a) A certificate of conversion that has been executed in accordance with s. 607.0120 and by the other business entity as required by applicable law.

(b) Articles of incorporation that comply with s. 607.0202 and have been executed in accordance with s. 607.0120.

(3) The certificate of conversion shall state:

(a) The date on which, and the jurisdiction in which, the other business entity was first organized and, if the entity has changed, its jurisdiction immediately prior to its conversion.

(b) The name of the other business entity immediately prior to the filing of the certificate of conversion to a corporation.

(c) The name of the corporation as set forth in its articles of incorporation filed in accordance with subsection (2).

(d) The delayed effective date or time, which, subject to the limitations in s. 607.0123(2), shall be a date or time certain, of the conversion if the conversion is not to be effective upon the filing of the certificate of conversion and the articles of incorporation, provided such delayed effective date may not be different than the effective date and time of the articles of incorporation.

(4) Upon the filing with the Department of State of the certificate of conversion and the articles of incorporation, or upon the delayed effective date or time of the certificate of conversion and the articles of incorporation, the other business entity shall be converted into a domestic corporation and the corporation shall thereafter be subject to all of the provisions of this chapter, except notwithstanding s. 607.0123, the existence of the corporation shall be deemed to have commenced when the other business entity commenced its existence in the

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jurisdiction in which the other business entity was first organized.

(5) The conversion of any other business entity into a domestic corporation shall not affect any obligations or liabilities of the other business entity incurred prior to its conversion to a domestic corporation or the personal liability of any person incurred prior to such conversion.

(6) When any conversion becomes effective under this section, for all purposes of the laws of this state, all of the rights, privileges, and powers of the other business entity that has been converted, and all property, real, personal, and mixed, and all debts due to such other business entity, as well as all other things and causes of action belonging to such other business entity, shall be vested in the domestic corporation into which it was converted and shall thereafter be the property of the domestic corporation as they were of the other business entity. Without limiting this provision, title to any real property, or any interest therein, vested by deed or otherwise in such other business entity at the time of conversion shall remain vested in the converted entity without reversion or impairment by operation of this chapter. All rights of creditors and all liens upon any property of such other business entity shall be preserved unimpaired, and all debts, liabilities, and duties of such other business entity shall thenceforth attach to the domestic corporation into which it was converted and may be enforced against the domestic corporation to the same extent as if said debts, liabilities, and duties had been incurred or contracted by the domestic corporation.

(7) Unless otherwise agreed, or as required under applicable laws of states other than this state, the converting entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets and the conversion shall not constitute a dissolution of such entity and shall constitute a continuation of the existence of the converting entity in the form of a domestic corporation.

(8) Prior to filing a certificate of conversion with the Department of State, the conversion shall be approved in the manner provided for by the document, instrument, agreement, or other writing, as the case may be, governing the internal affairs of the other business entity or by other applicable law,

as appropriate, and the articles of incorporation and bylaws of the corporation shall be approved by the same authorization required to approve the conversion. As part of such an approval, a plan of conversion or other record may describe the manner and basis of converting the partnership interests, limited liability company interests, obligations, or securities of, or other interests or rights in, the other business entity, including any rights to acquire any such interests, obligations, securities, or other rights, into shares of the domestic corporation, or rights to acquire shares, obligations, securities, or other rights, or, in whole or in part, into cash or other consideration. Such a plan or other record may also contain other provisions relating to the conversion, including without limitation the right of the other business entity to abandon a proposed conversion, or an effective date for the conversion that is not inconsistent with paragraph (2)(d).

**607.1201 Sale of assets in regular course of business and mortgage of assets.—**

(1) A corporation may, on the terms and conditions and for the consideration determined by the board of directors:

(a) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business;

(b) Mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), create a security interest in, or otherwise encumber any or all of its property whether or not in the usual and regular course of business; or

(c) Transfer any or all of its property to a corporation all the shares of which are owned by the corporation.

(2) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (1) is not required.

History.—s. 116, ch. 89-154.

**607.1202 Sale of assets other than in regular course of business.—**

(1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property (with or without the good will), otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration

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determined by the corporation's board of directors, if the board of directors proposes and its shareholders of record approve the proposed transaction.

(2) For a transaction to be authorized:

(a) The board of directors must recommend the proposed transaction to the shareholders of record unless the board of directors determines that it should make no recommendation because of conflict of interest or other special circumstances and communicates the basis for its determination to the shareholders of record with the submission of the proposed transaction; and

(b) The shareholders entitled to vote must approve the transaction as provided in subsection (5).

(3) The board of directors may condition its submission of the proposed transaction on any basis.

(4) The corporation shall notify each shareholder of record, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with s. 607.0705. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation, regardless of whether or not the meeting is an annual or a special meeting, and shall contain or be accompanied by a description of the transaction. Furthermore, the notice shall contain a clear and concise statement that, if the transaction is effected, shareholders dissenting therefrom are or may be entitled, if they comply with the provisions of this act regarding appraisal rights, to be paid the fair value of their shares and such notice shall be accompanied by a copy of ss. 607.1301-607.1333.

(5) Unless this act, the articles of incorporation, or the board of directors (acting pursuant to subsection (3)) requires a greater vote or a vote by voting groups, the transaction to be authorized shall be approved by a majority of all the votes entitled to be cast on the transaction.

(6) Any plan or agreement providing for a sale, lease, exchange, or other disposition of property, or any resolution of the board of directors or shareholders approving such transaction, may authorize the board of directors of the corporation to amend the terms thereof at any time prior to the

consummation of such transaction. An amendment made subsequent to the approval of the transaction by the shareholders of the corporation may not:

(a) Change the amount or kind of shares, securities, cash, property, or rights to be received in exchange for the corporation's property; or

(b) Change any other terms and conditions of the transaction if such change would materially and adversely affect the shareholders or the corporation.

(7) Unless a plan or agreement providing for a sale, lease, exchange, or other disposition of property, or any resolution of the board of directors or shareholders approving such transaction, prohibits abandonment of the transaction without shareholder approval after a transaction has been authorized, the planned transaction may be abandoned (subject to any contractual rights) at any time prior to consummation thereof, without further shareholder action, in accordance with the procedure set forth in the plan, agreement, or resolutions providing for or approving such transaction or, if none is set forth, in the manner determined by the board of directors.

(8) A transaction that constitutes a distribution is governed by s. 607.06401 and not by this section.

**607.1301 Appraisal rights; definitions.**—The following definitions apply to ss. 607.1302-607.1333:

(1) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive thereof. For purposes of s. 607.1302(2)(d), a person is deemed to be an affiliate of its senior executives.

(2) "Beneficial shareholder" means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.

(3) "Corporation" means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in ss. 607.1322-607.1333, includes the surviving entity in a merger.

(4) "Fair value" means the value of the corporation's shares determined:

(a) Immediately before the effectuation of the corporate action to which the shareholder objects.

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(b) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable to the corporation and its remaining shareholders.

(c) For a corporation with 10 or fewer shareholders, without discounting for lack of marketability or minority status.

(5) “Interest” means interest from the effective date of the corporate action until the date of payment, at the rate of interest on judgments in this state on the effective date of the corporate action.

(6) “Preferred shares” means a class or series of shares the holders of which have preference over any other class or series with respect to distributions.

(7) “Record shareholder” means the person in whose name shares are registered in the records of the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.

(8) “Senior executive” means the chief executive officer, chief operating officer, chief financial officer, or anyone in charge of a principal business unit or function.

(9) “Shareholder” means both a record shareholder and a beneficial shareholder.

### **607.1302 Right of shareholders to appraisal.—**

(1) A shareholder of a domestic corporation is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder’s shares, in the event of any of the following corporate actions:

(a) Consummation of a conversion of such corporation pursuant to s. 607.1112 if shareholder approval is required for the conversion and the shareholder is entitled to vote on the conversion under ss. 607.1103 and 607.1112(6), or the consummation of a merger to which such corporation is a party if shareholder approval is required for the merger under s. 607.1103 and the shareholder is entitled to vote on the merger or if such corporation is a subsidiary and the merger is governed by s. 607.1104;

(b) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired if the shareholder is entitled to vote on the exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(c) Consummation of a disposition of assets pursuant to s. 607.1202 if the shareholder is entitled to vote on the disposition, including a sale in dissolution but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within 1 year after the date of sale;

(d) An amendment of the articles of incorporation with respect to the class or series of shares which reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created;

(e) Any other amendment to the articles of incorporation, merger, share exchange, or disposition of assets to the extent provided by the articles of incorporation, bylaws, or a resolution of the board of directors, except that no bylaw or board resolution providing for appraisal rights may be amended or otherwise altered except by shareholder approval; or

(f) With regard to a class of shares prescribed in the articles of incorporation prior to October 1, 2003, including any shares within that class subsequently authorized by amendment, any amendment of the articles of incorporation if the shareholder is entitled to vote on the amendment and if such amendment would adversely affect such shareholder by:

1. Altering or abolishing any preemptive rights attached to any of his or her shares;
2. Altering or abolishing the voting rights pertaining to any of his or her shares, except as such rights may be affected by the voting rights of new shares then being authorized of any existing or new class or series of shares;
3. Effecting an exchange, cancellation, or reclassification of any of his or her shares, when such exchange, cancellation, or reclassification

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would alter or abolish the shareholder's voting rights or alter his or her percentage of equity in the corporation, or effecting a reduction or cancellation of accrued dividends or other arrearages in respect to such shares;

4. Reducing the stated redemption price of any of the shareholder's redeemable shares, altering or abolishing any provision relating to any sinking fund for the redemption or purchase of any of his or her shares, or making any of his or her shares subject to redemption when they are not otherwise redeemable;

5. Making noncumulative, in whole or in part, dividends of any of the shareholder's preferred shares which had theretofore been cumulative;

6. Reducing the stated dividend preference of any of the shareholder's preferred shares; or

7. Reducing any stated preferential amount payable on any of the shareholder's preferred shares upon voluntary or involuntary liquidation.

(2) Notwithstanding subsection (1), the availability of appraisal rights under paragraphs (1)(a), (b), (c), and (d) shall be limited in accordance with the following provisions:

(a) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

1. Listed on the New York Stock Exchange or the American Stock Exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.; or

2. Not so listed or designated, but has at least 2,000 shareholders and the outstanding shares of such class or series have a market value of at least \$10 million, exclusive of the value of such shares held by its subsidiaries, senior executives, directors, and beneficial shareholders owning more than 10 percent of such shares.

(b) The applicability of paragraph (a) shall be determined as of:

1. The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

2. If there will be no meeting of shareholders, the close of business on the day on which the board of

directors adopts the resolution recommending such corporate action.

(c) Paragraph (a) shall not be applicable and appraisal rights shall be available pursuant to subsection (1) for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in paragraph (a) at the time the corporate action becomes effective.

(d) Paragraph (a) shall not be applicable and appraisal rights shall be available pursuant to subsection (1) for the holders of any class or series of shares if:

1. Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange, or otherwise, pursuant to the corporate action by a person, or by an affiliate of a person, who:

a. Is, or at any time in the 1-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, the beneficial owner of 20 percent or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if such offer was made within 1 year prior to the corporate action requiring appraisal rights for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action; or

b. Directly or indirectly has, or at any time in the 1-year period immediately preceding approval by the board of directors of the corporation of the corporate action requiring appraisal rights had, the power, contractually or otherwise, to cause the appointment or election of 25 percent or more of the directors to the board of directors of the corporation; or

2. Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange, or otherwise, pursuant to such corporate action by a person, or by an affiliate of a person, who is, or at any time in the 1-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal

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rights was, a senior executive or director of the corporation or a senior executive of any affiliate thereof, and that senior executive or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

- a. Employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action;
- b. Employment, consulting, retirement, or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in s. 607.0832; or
- c. In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.
- (e) For the purposes of paragraph (d) only, the term “beneficial owner” means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares, provided that a member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities if the member is precluded by the rules of such exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby shall be deemed to have acquired beneficial ownership, as of the date of such agreement, of all voting shares of the corporation beneficially owned by any member of the group.
- (3) Notwithstanding any other provision of this section, the articles of incorporation as originally

filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange, or other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within 1 year of that date if such action would otherwise afford appraisal rights.

(4) A shareholder entitled to appraisal rights under this chapter may not challenge a completed corporate action for which appraisal rights are available unless such corporate action:

- (a) Was not effectuated in accordance with the applicable provisions of this section or the corporation’s articles of incorporation, bylaws, or board of directors’ resolution authorizing the corporate action; or
- (b) Was procured as a result of fraud or material misrepresentation.

### **607.1303 Assertion of rights by nominees and beneficial owners.—**

- (1) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder’s name but owned by a beneficial shareholder only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder and notifies the corporation in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder’s name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder’s other shares were registered in the names of different record shareholders.
- (2) A beneficial shareholder may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

(a) Submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in s. 607.1322(2)(b)2.

(b) Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder.

**607.1320 Notice of appraisal rights.—**

(1) If proposed corporate action described in s. 607.1302(1) is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that shareholders are, are not, or may be entitled to assert appraisal rights under this chapter. If the corporation concludes that appraisal rights are or may be available, a copy of ss. 607.1301-607.1333 must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(2) In a merger pursuant to s. 607.1104, the parent corporation must notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice must be sent within 10 days after the corporate action became effective and include the materials described in s. 607.1322.

(3) If the proposed corporate action described in s. 607.1302(1) is to be approved other than by a shareholders' meeting, the notice referred to in subsection (1) must be sent to all shareholders at the time that consents are first solicited pursuant to s. 607.0704, whether or not consents are solicited from all shareholders, and include the materials described in s. 607.1322.

**607.1321 Notice of intent to demand payment.—**

(1) If proposed corporate action requiring appraisal rights under s. 607.1302 is submitted to a vote at a shareholders' meeting, or is submitted to a shareholder pursuant to a consent vote under s. 607.0704, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) Must deliver to the corporation before the vote is taken, or within 20 days after receiving the notice pursuant to s. 607.1320(3) if action is to be taken

without a shareholder meeting, written notice of the shareholder's intent to demand payment if the proposed action is effectuated.

(b) Must not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

(2) A shareholder who does not satisfy the requirements of subsection (1) is not entitled to payment under this chapter.

**607.1322 Appraisal notice and form.—**

(1) If proposed corporate action requiring appraisal rights under s. 607.1302(1) becomes effective, the corporation must deliver a written appraisal notice and form required by paragraph (2)(a) to all shareholders who satisfied the requirements of s. 607.1321. In the case of a merger under s. 607.1104, the parent must deliver a written appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(2) The appraisal notice must be sent no earlier than the date the corporate action became effective and no later than 10 days after such date and must:

(a) Supply a form that specifies the date that the corporate action became effective and that provides for the shareholder to state:

1. The shareholder's name and address.
2. The number, classes, and series of shares as to which the shareholder asserts appraisal rights.
3. That the shareholder did not vote for the transaction.
4. Whether the shareholder accepts the corporation's offer as stated in subparagraph (b)4.
5. If the offer is not accepted, the shareholder's estimated fair value of the shares and a demand for payment of the shareholder's estimated value plus interest.

(b) State:

1. Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subparagraph 2.
2. A date by which the corporation must receive the form, which date may not be fewer than 40 nor more than 60 days after the date the subsection (1)

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appraisal notice and form are sent, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date.

3. The corporation's estimate of the fair value of the shares.

4. An offer to each shareholder who is entitled to appraisal rights to pay the corporation's estimate of fair value set forth in subparagraph 3.

5. That, if requested in writing, the corporation will provide to the shareholder so requesting, within 10 days after the date specified in subparagraph 2., the number of shareholders who return the forms by the specified date and the total number of shares owned by them.

6. The date by which the notice to withdraw under s. 607.1323 must be received, which date must be within 20 days after the date specified in subparagraph 2.

(c) Be accompanied by:

1. Financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of the fiscal year ending not more than 15 months prior to the date of the corporation's appraisal notice, an income statement for that year, a cash flow statement for that year, and the latest available interim financial statements, if any.

2. A copy of ss. 607.1301-607.1333.

### **607.1323 Perfection of rights; right to withdraw.—**

(1) A shareholder who wishes to exercise appraisal rights must execute and return the form received pursuant to s. 607.1322(1) and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to s. 607.1322(2)(b)2. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the executed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection (2).

(2) A shareholder who has complied with subsection (1) may nevertheless decline to exercise

appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to s. 607.1322(2)(b)6. A shareholder who fails to so withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(3) A shareholder who does not execute and return the form and, in the case of certificated shares, deposit that shareholder's share certificates if required, each by the date set forth in the notice described in subsection (2), shall not be entitled to payment under this chapter.

### **607.1324 Shareholder's acceptance of corporation's offer.—**

(1) If the shareholder states on the form provided in s. 607.1322(1) that the shareholder accepts the offer of the corporation to pay the corporation's estimated fair value for the shares, the corporation shall make such payment to the shareholder within 90 days after the corporation's receipt of the form from the shareholder.

(2) Upon payment of the agreed value, the shareholder shall cease to have any interest in the shares.

### **607.1326 Procedure if shareholder is dissatisfied with offer.—**

(1) A shareholder who is dissatisfied with the corporation's offer as set forth pursuant to s. 607.1322(2)(b)4. must notify the corporation on the form provided pursuant to s. 607.1322(1) of that shareholder's estimate of the fair value of the shares and demand payment of that estimate plus interest.

(2) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (1) within the timeframe set forth in s. 607.1322(2)(b)2. waives the right to demand payment under this section and shall be entitled only to the payment offered by the corporation pursuant to s. 607.1322(2)(b)4.

**607.1330 Court action.—**

- (1) If a shareholder makes demand for payment under s. 607.1326 which remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, any shareholder who has made a demand pursuant to s. 607.1326 may commence the proceeding in the name of the corporation.
- (2) The proceeding shall be commenced in the appropriate court of the county in which the corporation's principal office, or, if none, its registered office, in this state is located. If the corporation is a foreign corporation without a registered office in this state, the proceeding shall be commenced in the county in this state in which the principal office or registered office of the domestic corporation merged with the foreign corporation was located at the time of the transaction.
- (3) All shareholders, whether or not residents of this state, whose demands remain unsettled shall be made parties to the proceeding as in an action against their shares. The corporation shall serve a copy of the initial pleading in such proceeding upon each shareholder party who is a resident of this state in the manner provided by law for the service of a summons and complaint and upon each nonresident shareholder party by registered or certified mail or by publication as provided by law.
- (4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) is plenary and exclusive. If it so elects, the court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them or in any amendment to the order. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.
- (5) Each shareholder made a party to the proceeding is entitled to judgment for the amount of the fair value of such shareholder's shares, plus interest, as found by the court.

- (6) The corporation shall pay each such shareholder the amount found to be due within 10 days after final determination of the proceedings. Upon payment of the judgment, the shareholder shall cease to have any interest in the shares.

**607.1331 Court costs and counsel fees.—**

- (1) The court in an appraisal proceeding shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.
- (2) The court in an appraisal proceeding may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:
  - (a) Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with ss. 607.1320 and 607.1322; or
  - (b) Against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.
- (3) If the court in an appraisal proceeding finds that the services of counsel for any shareholder were of substantial benefit to other shareholders similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to such counsel reasonable fees to be paid out of the amounts awarded the shareholders who were benefited.
- (4) To the extent the corporation fails to make a required payment pursuant to s. 607.1324, the shareholder may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the corporation all costs and expenses of the suit, including counsel fees.

**607.1332 Disposition of acquired shares.—**

Shares acquired by a corporation pursuant to payment of the agreed value thereof or pursuant to payment of the judgment entered therefor, as provided in this chapter, may be held and disposed of by such corporation as authorized but unissued shares of the corporation, except that, in the case of a merger or share exchange, they may be held and disposed of as the plan of merger or share exchange otherwise provides. The shares of the surviving corporation into which the shares of such shareholders demanding appraisal rights would have been converted had they assented to the merger shall have the status of authorized but unissued shares of the surviving corporation.

**607.1333 Limitation on corporate payment.—**

- (1) No payment shall be made to a shareholder seeking appraisal rights if, at the time of payment, the corporation is unable to meet the distribution standards of s. 607.06401. In such event, the shareholder shall, at the shareholder's option:
  - (a) Withdraw his or her notice of intent to assert appraisal rights, which shall in such event be deemed withdrawn with the consent of the corporation; or
  - (b) Retain his or her status as a claimant against the corporation and, if it is liquidated, be subordinated to the rights of creditors of the corporation, but have rights superior to the shareholders not asserting appraisal rights, and if it is not liquidated, retain his or her right to be paid for the shares, which right the corporation shall be obliged to satisfy when the restrictions of this section do not apply.
- (2) The shareholder shall exercise the option under paragraph (1)(a) or paragraph (b) by written notice filed with the corporation within 30 days after the corporation has given written notice that the payment for shares cannot be made because of the restrictions of this section. If the shareholder fails to exercise the option, the shareholder shall be deemed to have withdrawn his or her notice of intent to assert appraisal rights.

**607.1401 Dissolution by incorporators or directors.—**A majority of the incorporators or directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the Department of State for filing articles of dissolution that set forth:

- (1) The name of the corporation;
- (2) The date of filing of its articles of incorporation;
- (3) Either:
  - (a) That none of the corporation's shares have been issued, or
  - (b) That the corporation has not commenced business;
- (4) That no debt of the corporation remains unpaid;
- (5) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and
- (6) That a majority of the incorporators or directors authorized the dissolution.

**607.1402 Dissolution by board of directors and shareholders; dissolution by written consent of shareholders.—**

- (1) A corporation's board of directors may propose dissolution for submission to the shareholders.
- (2) For a proposal to dissolve to be adopted:
  - (a) The board of directors must recommend dissolution to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and
  - (b) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (5).
- (3) The board of directors may condition its submission of the proposal for dissolution on any basis.
- (4) The corporation shall notify each shareholder of record, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with s. 607.0705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

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(5) Unless the articles of incorporation or the board of directors (acting pursuant to subsection (3)) require a greater vote or a vote by voting groups, the proposal to dissolve to be adopted must be approved by a majority of all the votes entitled to be cast on that proposal.

(6) Alternatively, without action of the board of directors, action to dissolve a corporation may be taken by the written consent of the shareholders pursuant to s. 607.0704.

**607.1403 Articles of dissolution.—**

(1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Department of State for filing articles of dissolution which shall be executed in accordance with s. 607.0120 and which shall set forth:

- (a) The name of the corporation;
  - (b) The date dissolution was authorized;
  - (c) If dissolution was approved by the shareholders, a statement that the number cast for dissolution by the shareholders was sufficient for approval.
  - (d) If dissolution was approved by the shareholders and if voting by voting groups was required, a statement that the number cast for dissolution by the shareholders was sufficient for approval must be separately provided for each voting group entitled to vote separately on the plan to dissolve.
- (2) A corporation is dissolved upon the effective date of its articles of dissolution.

**607.1404 Revocation of dissolution.—**

- (1) A corporation may revoke its dissolution at any time prior to the expiration of 120 days following the effective date of the articles of dissolution.
- (2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.
- (3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Department of State

for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

- (a) The name of the corporation;
  - (b) The effective date of the dissolution that was revoked;
  - (c) The date that the revocation of dissolution was authorized;
  - (d) If the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;
  - (e) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
  - (f) If shareholder action was required to revoke the dissolution, the information required by s. 607.1403(1)(c) or (d).
- (4) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.
- (5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

**607.1405 Effect of dissolution.—**

- (1) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:
- (a) Collecting its assets;
  - (b) Disposing of its properties that will not be distributed in kind to its shareholders;
  - (c) Discharging or making provision for discharging its liabilities;
  - (d) Distributing its remaining property among its shareholders according to their interests; and
  - (e) Doing every other act necessary to wind up and liquidate its business and affairs.
- (2) Dissolution of a corporation does not:
- (a) Transfer title to the corporation's property;
  - (b) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

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- (c) Subject its directors or officers to standards of conduct different from those prescribed in ss. 607.0801-607.0850 except as provided in s. 607.1421(4);
  - (d) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
  - (e) Prevent commencement of a proceeding by or against the corporation in its corporate name;
  - (f) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
  - (g) Terminate the authority of the registered agent of the corporation.
- (3) The directors, officers, and agents of a corporation dissolved pursuant to s. 607.1403 shall not incur any personal liability thereby by reason of their status as directors, officers, and agents of a dissolved corporation, as distinguished from a corporation which is not dissolved.
- (4) The name of a dissolved corporation shall not be available for assumption or use by another corporation until 120 days after the effective date of dissolution unless the dissolved corporation provides the Department of State with an affidavit, executed pursuant to s. 607.0120, permitting the immediate assumption or use of the name by another corporation.
- (5) For purposes of this section, the circuit court may appoint a trustee for any property owned or acquired by the corporation who may engage in any act permitted under subsection (1) if any director or officer of the dissolved corporation is unwilling or unable to serve or cannot be located.

**607.1406 Known claims against dissolved corporation.—**

- (1) A dissolved corporation or successor entity, as defined in subsection (15), may dispose of the known claims against it by following the procedures described in subsections (2), (3), and (4).
- (2) The dissolved corporation or successor entity shall deliver to each of its known claimants written notice of the dissolution at any time after its effective date. The written notice shall:

- (a) Provide a reasonable description of the claim that the claimant may be entitled to assert;
  - (b) State whether the claim is admitted or not admitted, in whole or in part, and, if admitted:
    - 1. The amount that is admitted, which may be as of a given date; and
    - 2. Any interest obligation if fixed by an instrument of indebtedness;
  - (c) Provide a mailing address where a claim may be sent;
  - (d) State the deadline, which may not be fewer than 120 days after the effective date of the written notice, by which confirmation of the claim must be delivered to the dissolved corporation or successor entity; and
  - (e) State that the corporation or successor entity may make distributions thereafter to other claimants and the corporation's shareholders or persons interested as having been such without further notice.
- (3) A dissolved corporation or successor entity may reject, in whole or in part, any claim made by a claimant pursuant to this subsection by mailing notice of such rejection to the claimant within 90 days after receipt of such claim and, in all events, at least 150 days before expiration of 3 years following the effective date of dissolution. A notice sent by the dissolved corporation or successor entity pursuant to this subsection shall be accompanied by a copy of this section.
- (4) A dissolved corporation or successor entity electing to follow the procedures described in subsections (2) and (3) shall also give notice of the dissolution of the corporation to persons with known claims, that are contingent upon the occurrence or nonoccurrence of future events or otherwise conditional or unmatured, and request that such persons present such claims in accordance with the terms of such notice. Such notice shall be in substantially the same form, and sent in the same manner, as described in subsection (2).
- (5) A dissolved corporation or successor entity shall offer any claimant whose known claim is contingent, conditional, or unmatured such security as the corporation or such entity determines is sufficient to provide compensation to the claimant if the claim matures. The dissolved corporation or

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successor entity shall deliver such offer to the claimant within 90 days after receipt of such claim and, in all events, at least 150 days before expiration of 3 years following the effective date of dissolution. If the claimant offered such security does not deliver in writing to the dissolved corporation or successor entity a notice rejecting the offer within 120 days after receipt of such offer for security, the claimant is deemed to have accepted such security as the sole source from which to satisfy his or her claim against the corporation.

(6) A dissolved corporation or successor entity which has given notice in accordance with subsections (2) and (4) shall petition the circuit court in the county where the corporation's principal office is located or was located at the effective date of dissolution to determine the amount and form of security that will be sufficient to provide compensation to any claimant who has rejected the offer for security made pursuant to subsection (5).

(7) A dissolved corporation or successor entity which has given notice in accordance with subsection (2) shall petition the circuit court in the county where the corporation's principal office is located or was located at the effective date of dissolution to determine the amount and form of security which will be sufficient to provide compensation to claimants whose claims are known to the corporation or successor entity but whose identities are unknown. The court shall appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this subsection. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the petitioner in such proceeding.

(8) The giving of any notice or making of any offer pursuant to the provisions of this section shall not revive any claim then barred or constitute acknowledgment by the dissolved corporation or successor entity that any person to whom such notice is sent is a proper claimant and shall not operate as a waiver of any defense or counterclaim in respect of any claim asserted by any person to whom such notice is sent.

(9) A dissolved corporation or successor entity which has followed the procedures described in subsections (2)-(7):

- (a) Shall pay the claims admitted or made and not rejected in accordance with subsection (3);
- (b) Shall post the security offered and not rejected pursuant to subsection (5);
- (c) Shall post any security ordered by the circuit court in any proceeding under subsections (6) and (7); and
- (d) Shall pay or make provision for all other known obligations of the corporation or such successor entity.

Such claims or obligations shall be paid in full, and any such provision for payments shall be made in full if there are sufficient funds. If there are insufficient funds, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of funds legally available therefor. Any remaining funds shall be distributed to the shareholders of the dissolved corporation; however, such distribution may not be made before the expiration of 150 days from the date of the last notice of rejections given pursuant to subsection (3). In the absence of actual fraud, the judgment of the directors of the dissolved corporation or the governing persons of such successor entity as to the provisions made for the payment of all obligations under paragraph (d) is conclusive.

(10) A dissolved corporation or successor entity which has not followed the procedures described in subsections (2) and (3) shall pay or make reasonable provision to pay all known claims and obligations, including all contingent, conditional, or unmatured claims known to the corporation or such successor entity and all claims which are known to the dissolved corporation or such successor entity but for which the identity of the claimant is unknown. Such claims shall be paid in full, and any such provision for payment made shall be made in full if there are sufficient funds. If there are insufficient funds, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of funds legally available therefor. Any remaining

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funds shall be distributed to the shareholders of the dissolved corporation.

(11) Directors of a dissolved corporation or governing persons of a successor entity which has complied with subsection (9) or subsection (10) are not personally liable to the claimants of the dissolved corporation.

(12) A shareholder of a dissolved corporation the assets of which were distributed pursuant to subsection (9) or subsection (10) is not liable for any claim against the corporation in an amount in excess of such shareholder's pro rata share of the claim or the amount distributed to the shareholder, whichever is less.

(13) A shareholder of a dissolved corporation, the assets of which were distributed pursuant to subsection (9), is not liable for any claim against the corporation, which claim is known to the corporation or successor entity, on which a proceeding is not begun prior to the expiration of 3 years following the effective date of dissolution.

(14) The aggregate liability of any shareholder of a dissolved corporation arising under this section, s. 607.1407, or otherwise, may not exceed the amount distributed to the shareholder in dissolution.

(15) As used in this section or s. 607.1407, the term "successor entity" includes any trust, receivership, or other legal entity governed by the laws of this state to which the remaining assets and liabilities of a dissolved corporation are transferred and which exists solely for the purposes of prosecuting and defending suits by or against the dissolved corporation, enabling the dissolved corporation to settle and close the business of the dissolved corporation, to dispose of and convey the property of the dissolved corporation, to discharge the liabilities of the dissolved corporation, and to distribute to the dissolved corporation's shareholders any remaining assets, but not for the purpose of continuing the business for which the dissolved corporation was organized.

**607.1407 Unknown claims against dissolved corporation.**—A dissolved corporation or successor entity, as defined in s. 607.1406(15), may choose to execute one of the following procedures to resolve payment of unknown claims.

(1) A dissolved corporation or successor entity may file notice of its dissolution with the Department of State on the form prescribed by the Department of State and request that persons with claims against the corporation which are not known to the corporation or successor entity present them in accordance with the notice. The notice shall:

(a) State the name of the corporation and the date of dissolution;

(b) Describe the information that must be included in a claim and provide a mailing address to which the claim may be sent; and

(c) State that a claim against the corporation under this subsection will be barred unless a proceeding to enforce the claim is commenced within 4 years after the filing of the notice.

(2) A dissolved corporation or successor entity may, within 10 days after filing articles of dissolution with the Department of State, publish a "Notice of Corporate Dissolution." The notice shall appear once a week for 2 consecutive weeks in a newspaper of general circulation in a county in the state in which the corporation has its principal office, if any, or, if none, in a county in the state in which the corporation owns real or personal property. Such newspaper shall meet the requirements as are prescribed by law for such purposes. The notice shall:

(a) State the name of the corporation and the date of dissolution;

(b) Describe the information that must be included in a claim and provide a mailing address to which the claim may be sent; and

(c) State that a claim against the corporation under this subsection will be barred unless a proceeding to enforce the claim is commenced within 4 years after the date of the second consecutive weekly publication of the notice authorized by this section.

(3) If the dissolved corporation or successor entity complies with subsection (1) or subsection (2), the claim of each of the following claimants is barred unless the claimant commences a proceeding to

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enforce the claim against the dissolved corporation within 4 years after the date of filing the notice with the Department of State or the date of the second consecutive weekly publication, as applicable:

- (a) A claimant who did not receive written notice under s. 607.1406(9), or whose claim was not provided for under s. 607.1406(10), whether such claim is based on an event occurring before or after the effective date of dissolution.
- (b) A claimant whose claim was timely sent to the dissolved corporation but on which no action was taken.
- (4) A claim may be entered under this section:
  - (a) Against the dissolved corporation, to the extent of its undistributed assets; or
  - (b) If the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of such shareholder's pro rata share of the claim or the corporate assets distributed to such shareholder in liquidation, whichever is less, provided that the aggregate liability of any shareholder of a dissolved corporation arising under this section, s. 607.1406, or otherwise may not exceed the amount distributed to the shareholder in dissolution.

Nothing in this section shall preclude or relieve the corporation from its notification to claimants otherwise set forth in this chapter.

### **607.1420 Grounds for administrative dissolution.—**

- (1) The Department of State may commence a proceeding under s. 607.1421 to administratively dissolve a corporation if:
  - (a) The corporation has failed to file its annual report and pay the annual report filing fee by 5 p.m. Eastern Time on the third Friday in September;
  - (b) The corporation is without a registered agent or registered office in this state for 30 days or more;
  - (c) The corporation does not notify the Department of State within 30 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;
  - (d) The corporation has failed to answer truthfully and fully, within the time prescribed by this act,

interrogatories propounded by the Department of State; or

- (e) The corporation's period of duration stated in its articles of incorporation has expired.
- (2) The foregoing enumeration in subsection (1) of grounds for administrative dissolution shall not exclude actions or special proceedings by the Department of Legal Affairs or any state officials for the annulment or dissolution of a corporation for other causes as provided in any other statute of this state.

### **607.1421 Procedure for and effect of administrative dissolution.—**

- (1) If the Department of State determines that one or more grounds exist under s. 607.1420 for dissolving a corporation, it shall serve the corporation with notice of its intention to administratively dissolve the corporation. If the corporation has provided the department with an electronic mail address, such notice shall be by electronic transmission. Administrative dissolution for failure to file an annual report shall occur on the fourth Friday in September of each year. The Department of State shall issue a certificate of dissolution to each dissolved corporation. Issuance of the certificate of dissolution may be by electronic transmission to any corporation that has provided the department with an electronic mail address.
- (2) If the corporation does not correct each ground for dissolution under s. 607.1420(1)(b), (c), (d), or (e) or demonstrate to the reasonable satisfaction of the Department of State that each ground determined by the department does not exist within 60 days of issuance of the notice, the department shall administratively dissolve the corporation by issuing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. Issuance of the certificate of dissolution may be by electronic transmission to any corporation that has provided the department with an electronic mail address.
- (3) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under s. 607.1405 and notify claimants under s. 607.1406.

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(4) A director, officer, or agent of a corporation dissolved pursuant to this section, purporting to act on behalf of the corporation, is personally liable for the debts, obligations, and liabilities of the corporation arising from such action and incurred subsequent to the corporation's administrative dissolution only if he or she has actual notice of the administrative dissolution at the time such action is taken; but such liability shall be terminated upon the ratification of such action by the corporation's board of directors or shareholders subsequent to the reinstatement of the corporation under ss. 607.1401-607.14401.

(5) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

**607.1422 Reinstatement following administrative dissolution.—**

(1) A corporation administratively dissolved under s. 607.1421 may apply to the Department of State for reinstatement at any time after the effective date of dissolution. The corporation must submit a reinstatement form prescribed and furnished by the Department of State or a current uniform business report signed by the registered agent and an officer or director and all fees then owed by the corporation, computed at the rate provided by law at the time the corporation applies for reinstatement.

(2) If the Department of State determines that the application contains the information required by subsection (1) and that the information is correct, it shall reinstate the corporation.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

(4) The name of the dissolved corporation shall not be available for assumption or use by another corporation until 1 year after the effective date of dissolution unless the dissolved corporation provides the Department of State with an affidavit executed as required by s. 607.0120 permitting the immediate assumption or use of the name by another corporation.

(5) If the name of the dissolved corporation has been lawfully assumed in this state by another corporation, the Department of State shall require the dissolved corporation to amend its articles of incorporation to change its name before accepting its application for reinstatement.

**607.1423 Appeal from denial of reinstatement.—**

(1) If the Department of State denies a corporation's application for reinstatement following administrative dissolution, it shall serve the corporation under s. 607.0504(2) with a written notice that explains the reason or reasons for denial.

(2) After exhaustion of administrative remedies, the corporation may appeal the denial of reinstatement to the appropriate court as provided in s. 120.68 within 30 days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Department of State's certificate of dissolution, the corporation's application for reinstatement, and the department's notice of denial.

(3) The court may summarily order the Department of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

**607.1430 Grounds for judicial dissolution.—**A circuit court may dissolve a corporation or order such other remedy as provided in s. 607.1434:

(1)(a) In a proceeding by the Department of Legal Affairs if it is established that:

1. The corporation obtained its articles of incorporation through fraud; or
2. The corporation has continued to exceed or abuse the authority conferred upon it by law.

(b) The enumeration in paragraph (a) of grounds for involuntary dissolution does not exclude actions or special proceedings by the Department of Legal Affairs or any state official for the annulment or dissolution of a corporation for other causes as provided in any other statute of this state;

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(2) In a proceeding by a shareholder if it is established that:

(a) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or

(b) The shareholders are deadlocked in voting power and have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors;

(3) In a proceeding by a shareholder or group of shareholders in a corporation having 35 or fewer shareholders if it is established that:

(a) The corporate assets are being misapplied or wasted, causing material injury to the corporation; or

(b) The directors or those in control of the corporation have acted, are acting, or are reasonably expected to act in a manner that is illegal or fraudulent;

(4) In a proceeding by a creditor if it is established that:

(a) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(b) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(5) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

**607.1431 Procedure for judicial dissolution.—**

(1) Venue for a proceeding brought under s. 607.1430 lies in the circuit court of the county where the corporation's principal office is or was last located, as shown by the records of the Department of State, or, if none in this state, where its registered office is or was last located.

(2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action

required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(4) If the court determines that any party has commenced, continued, or participated in an action under s. 607.1430 and has acted arbitrarily, frivolously, vexatiously, or not in good faith, the court may, in its discretion, award attorney's fees and other reasonable expenses to the other parties to the action who have been affected adversely by such actions.

**607.1432 Receivership or custodianship.—**

(1) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(2) The court may appoint a natural person or a corporation authorized to act as a receiver or custodian. The corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) The receiver:

1. May dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and
2. May sue and defend in his or her own name as receiver of the corporation in all courts of this state.

(b) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(4) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation and its shareholders and creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his or her counsel from the assets of the corporation or proceeds from the sale of the assets.

(6) The court has jurisdiction to appoint an ancillary receiver for the assets and business of a corporation. The ancillary receiver shall serve ancillary to a receiver located in any other state, whenever the court deems that circumstances exist requiring the appointment of such a receiver. The court may appoint such an ancillary receiver for a foreign corporation even though no receiver has been appointed elsewhere. Such receivership shall be converted into an ancillary receivership when an order entered by a court of competent jurisdiction in the other state provides for a receivership of the corporation.

**607.1433 Judgment of dissolution.—**

(1) If after a hearing the court determines that one or more grounds for judicial dissolution described in s. 607.1430 exist, it may enter a judgment dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the judgment to the Department of State, which shall file it.

(2) After entering the judgment of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with s. 607.1405 and the notification of claimants in accordance with s. 607.1406, subject to the provisions of subsection (3).

(3) In a proceeding for judicial dissolution, the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, it shall fix a date, which shall be not less than 4 months from the date of the order, as the last day for filing of claims. The

court shall prescribe the method by which such notice of the deadline for filing claims shall be given to creditors and claimants. Prior to the date so fixed, the court may extend the time for the filing of claims by court order. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation. Nothing in this section affects the enforceability of any recorded mortgage or lien or the perfected security interest or rights of a person in possession of real or personal property.

**607.1434 Alternative remedies to judicial dissolution.—**In an action for dissolution pursuant to s. 607.1430, the court may, upon a showing of sufficient merit to warrant such remedy:

(1) Appoint a receiver or custodian pendente lite as provided in s. 607.1432;

(2) Appoint a provisional director as provided in s. 607.1435;

(3) Order a purchase of the complaining shareholder's shares pursuant to s. 607.1436; or

(4) Upon proof of good cause, make any order or grant any equitable relief other than dissolution or liquidation as in its discretion it may deem appropriate.

**607.1435 Provisional director.—**

(1) A provisional director may be appointed in the discretion of the court if it appears that such action by the court will remedy the grounds alleged by the complaining shareholder to support the jurisdiction of the court under s. 607.1430. A provisional director may be appointed notwithstanding the absence of a vacancy on the board of directors, and such director shall have all the rights and powers of a duly elected director, including the right to notice of and to vote at meetings of directors, until such time as the provisional director is removed by order of the court or, unless otherwise ordered by a court, removed by a vote of the shareholders sufficient either to elect a majority of the board of directors or, if greater than majority voting is required by the articles of incorporation or the bylaws, to elect the requisite number of directors needed to take action. A provisional director shall be an impartial person

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who is neither a shareholder nor a creditor of the corporation or of any subsidiary or affiliate of the corporation, and whose further qualifications, if any, may be determined by the court.

(2) A provisional director shall report from time to time to the court concerning the matter complained of, or the status of the deadlock, if any, and of the status of the corporation's business, as the court shall direct. No provisional director shall be liable for any action taken or decision made, except as directors may be liable under s. 607.0831. In addition, the provisional director shall submit to the court, if so directed, recommendations as to the appropriate disposition of the action. Whenever a provisional director is appointed, any officer or director of the corporation may, from time to time, petition the court for instructions clarifying the duties and responsibilities of such officer or director.

(3) In any proceeding under this section, the court shall allow reasonable compensation to the provisional director for services rendered and reimbursement or direct payment of reasonable costs and expenses, which amounts shall be paid by the corporation.

### **607.1436 Election to purchase instead of dissolution.—**

(1) In a proceeding under s. 607.1430(2) or (3) to dissolve a corporation, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of the petition under s. 607.1430(2) or (3) or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within 10 days thereafter, give written notice to all shareholders, other than the petitioner. The notice must state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing

shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate must file notice of their intention to join in the purchase no later than 30 days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under s. 607.1430(2) or (3) may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his or her shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other disposition.

(3) If, within 60 days after the filing of the first election, the parties reach agreement as to the fair value and terms of the purchase of the petitioner's shares, the court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

(4) If the parties are unable to reach an agreement as provided for in subsection (3), the court, upon application of any party, shall stay the s. 607.1430 proceedings and determine the fair value of the petitioner's shares as of the day before the date on which the petition under s. 607.1430 was filed or as of such other date as the court deems appropriate under the circumstances.

(5) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, when necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among such shareholders. In allocating petitioner's shares

among holders of different classes of shares, the court shall attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable; however, if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under s. 607.1430(3), it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by petitioner.

(6) Upon entry of an order under subsection (3) or subsection (5), the court shall dismiss the petition to dissolve the corporation under s. 607.1430 and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded by the order of the court, which shall be enforceable in the same manner as any other judgment.

(7) The purchase ordered pursuant to subsection (5) shall be made within 10 days after the date the order becomes final unless, before that time, the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to ss. 607.1402 and 607.1403, which articles shall then be adopted and filed within 50 days thereafter. Upon filing of such articles of dissolution, the corporation shall be dissolved in accordance with the provisions of ss. 607.1405 and 607.1406, and the order entered pursuant to subsection (5) shall no longer be of any force or effect, except that the court may award the petitioning shareholder reasonable fees and expenses of counsel and any experts in accordance with the provisions of subsection (5) and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

(8) Any payment by the corporation pursuant to an order under subsection (3) or subsection (5), other than an award of fees and expenses pursuant to subsection (5), is subject to the provisions of s. 607.06401.

**607.14401 Deposit with Department of Financial Services.**—Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be deposited, within 6 months from the date fixed for the payment of the final liquidating distribution, with the Department of Financial Services, where such assets shall be held as abandoned property. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount or assets deposited, the Department of Financial Services shall pay the creditor, claimant, or shareholder or his or her representative that amount or those assets.

**607.1501 Authority of foreign corporation to transact business required.**—

- (1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Department of State.
- (2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):
  - (a) Maintaining, defending, or settling any proceeding.
  - (b) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs.
  - (c) Maintaining bank accounts.
  - (d) Maintaining officers or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities.
  - (e) Selling through independent contractors.
  - (f) Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this state before they become contracts.
  - (g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.
  - (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.
  - (i) Transacting business in interstate commerce.

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- (j) Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature.
- (k) Owning and controlling a subsidiary corporation incorporated in or transacting business within this state or voting the stock of any corporation which it has lawfully acquired.
- (l) Owning a limited partnership interest in a limited partnership that is doing business within this state, unless such limited partner manages or controls the partnership or exercises the powers and duties of a general partner.
- (m) Owning, without more, real or personal property.
- (3) The list of activities in subsection (2) is not exhaustive.
- (4) This section has no application to the question of whether any foreign corporation is subject to service of process and suit in this state under any law of this state.

### **607.1502 Consequences of transacting business without authority.—**

- (1) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.
- (2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.
- (3) A court may stay a proceeding commenced by a foreign corporation or its successor or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.
- (4) A foreign corporation which transacts business in this state without authority to do so shall be liable to this state for the years or parts thereof during which it transacted business in this state without authority in an amount equal to all fees and taxes which would have been imposed by this act upon

such corporation had it duly applied for and received authority to transact business in this state as required by this act. In addition to the payments thus prescribed, such corporation shall be liable for a civil penalty of not less than \$500 or more than \$1,000 for each year or part thereof during which it transacts business in this state without a certificate of authority. The Department of State may collect all penalties due under this subsection and may bring an action in circuit court to recover all penalties and fees due and owing the state.

(5) Notwithstanding subsections (1) and (2), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of any of its contracts, deeds, mortgages, security interests, or corporate acts or prevent it from defending any proceeding in this state.

### **607.1503 Application for certificate of authority.—**

- (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Department of State for filing. Such application shall be made on forms prescribed and furnished by the Department of State and shall set forth:
  - (a) The name of the foreign corporation as long as its name satisfies the requirements of s. 607.0401, but if its name does not satisfy such requirements, a corporate name that otherwise satisfies the requirements of s. 607.1506;
  - (b) The jurisdiction under the law of which it is incorporated;
  - (c) Its date of incorporation and period of duration;
  - (d) The street address of its principal office;
  - (e) The address of its registered office in this state and the name of its registered agent at that office;
  - (f) The names and usual business addresses of its current directors and officers;
  - (g) Such additional information as may be necessary or appropriate in order to enable the Department of State to determine whether such corporation is entitled to file an application for authority to transact business in this state and to determine and assess the fees and taxes payable as prescribed in this act.

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(2) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated, not more than 90 days prior to delivery of the application to the Department of State, by the secretary of state or other official having custody of corporate records in the jurisdiction under the law of which it is incorporated. A translation of the certificate, under oath of the translator, must be attached to a certificate which is in a language other than the English language.

(3) A foreign corporation shall not be denied authority to transact business in this state by reason of the fact that the laws of the jurisdiction under which such corporation is organized governing its organization and internal affairs differ from the laws of this state.

### **607.1504 Amended certificate of authority.—**

(1) A foreign corporation authorized to transact business in this state shall make application to the Department of State to obtain an amended certificate of authority if it changes:

- (a) Its corporate name;
- (b) The period of its duration; or
- (c) The jurisdiction of its incorporation.

(2) Such application shall be made within 90 days after the occurrence of any change mentioned in subsection (1), shall be made on forms prescribed by the Department of State, and shall be executed in accordance with s. 607.0120. The foreign corporation shall deliver with the completed application, a certificate, or a document of similar import, authenticated as of a date not more than 90 days prior to delivery of the application to the Department of State by the Secretary of State or other official having custody of corporate records in the jurisdiction under the laws of which it is incorporated, evidencing the amendment. A translation of the certificate, under oath or affirmation of the translator, must be attached to a certificate that is in a language other than English. The application shall set forth:

- (a) The name of the foreign corporation as it appears on the records of the Department of State.
- (b) The jurisdiction of its incorporation.

(c) The date it was authorized to do business in this state.

(d) If the name of the foreign corporation has been changed, the name relinquished, the new name, a statement that the change of name has been effected under the laws of the jurisdiction of its incorporation, and the date the change was effected.

(e) If the amendment changes its period of duration, a statement of such change.

(f) If the amendment changes the jurisdiction of incorporation, a statement of such change.

(3) The requirements of s. 607.1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

### **607.1505 Effect of certificate of authority.—**

(1) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the Department of State to suspend or revoke the certificate as provided in this act.

(2) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by this act is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(3) This act does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

### **607.1506 Corporate name of foreign corporation.—**

(1) A foreign corporation is not entitled to file an application for a certificate of authority unless the corporate name of such corporation satisfies the requirements of s. 607.0401. If the corporate name of a foreign corporation does not satisfy the requirements of s. 607.0401, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state:

- (a) May add the word “corporation,” “company,” or “incorporated” or the abbreviation “Corp.,” “Inc.,” “Co.,” or the designation “Corp,” “Inc,” or “Co,” as will clearly indicate that it is a corporation

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instead of a natural person, partnership, or other business entity; or

(b) May use an alternate name to transact business in this state if its real name is unavailable. Any such alternate corporate name, adopted for use in this state, shall be cross-referenced to the real corporate name in the records of the Division of Corporations. If the corporation's real corporate name becomes available in this state or the corporation chooses to change its alternate name, a copy of the resolution of its board of directors changing or withdrawing the alternate name, executed as required by s. 607.0120, shall be delivered for filing.

(2) The corporate name (including the alternate name) of a foreign corporation must be distinguishable upon the records of the Division of Corporations from:

- (a) Any corporate name of a corporation incorporated or authorized to transact business in this state;
- (b) The alternate name of another foreign corporation authorized to transact business in this state;
- (c) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state; and
- (d) The names of all other entities or filings, except fictitious name registrations pursuant to s. 865.09, organized or registered under the laws of this state that are on file with the Division of Corporations.

(3) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of s. 607.0401, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of s. 607.0401 and obtains an amended certificate of authority under s. 607.1504.

**607.1507 Registered office and registered agent of foreign corporation.—**

(1) Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

- (a) A registered office that may be the same as any of its places of business; and

(b) A registered agent, who may be:

- 1. An individual who resides in this state and whose business office is identical with the registered office;
- 2. A corporation or not-for-profit corporation as defined in chapter 617, the business office of which is identical with the registered office; or
- 3. Another foreign corporation or foreign not-for-profit corporation authorized pursuant to this chapter or chapter 617, to transact business or conduct its affairs in this state the business office of which is identical with the registered office.

(2) A registered agent appointed pursuant to this section or a successor registered agent appointed pursuant to s. 607.1508 on whom process may be served shall each file a statement in writing with the Department of State, in such form and manner as shall be prescribed by the department, accepting the appointment as a registered agent simultaneously with his or her being designated. Such statement of acceptance shall state that the registered agent is familiar with, and accepts, the obligations of that position.

**607.1508 Change of registered office and registered agent of foreign corporation.—**

(1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Department of State for filing a statement of change that sets forth:

- (a) Its name;
- (b) The street address of its current registered office;
- (c) If the current registered office is to be changed, the street address of its new registered office;
- (d) The name of its current registered agent;
- (e) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment;
- (f) That, after the change or changes are made, the street address of its registered office and the business office of its registered agent will be identical; and
- (g) That such change was authorized by resolution duly adopted by its board of directors or by an

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officer of the corporation so authorized by the board of directors.

(2) If a registered agent changes the street address of her or his business office, she or he may change the street address of the registered office of any foreign corporation for which she or he is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Department of State for filing a statement of change that complies with the requirements of paragraphs (1)(a)-(f) and recites that the corporation has been notified of the change.

**607.1509 Resignation of registered agent of foreign corporation.—**

(1) The registered agent of a foreign corporation may resign his or her agency appointment by signing and delivering to the Department of State for filing a statement of resignation and mailing a copy of such statement to the corporation at the corporation's principal office address shown in its most recent annual report or, if none, shown in its application for a certificate of authority or other most recently filed document. The statement of resignation must state that a copy of such statement has been mailed to the corporation at the address so stated. The statement of resignation may include a statement that the registered office is also discontinued.

(2) The agency appointment is terminated as of the 31st day after the date on which the statement was filed and, unless otherwise provided in the statement, termination of the agency acts as a termination of the registered office.

**607.15101 Service of process, notice, or demand on a foreign corporation.—**

(1) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(2) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a

certificate of authority or in its most recent annual report if the foreign corporation:

(a) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(b) Has withdrawn from transacting business in this state under s. 607.1520; or

(c) Has had its certificate of authority revoked under s. 607.1531.

(3) Service is perfected under subsection (2) at the earliest of:

(a) The date the foreign corporation receives the mail;

(b) The date shown on the return receipt, if signed on behalf of the foreign corporation; or

(c) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(4) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation. Process against any foreign corporation may also be served in accordance with chapter 48 or chapter 49.

(5) Any notice to or demand on a foreign corporation made pursuant to this act may be made in accordance with the procedures for notice to or demand on domestic corporations under s. 607.0504.

**607.1520 Withdrawal of foreign corporation.—**

(1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Department of State.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Department of State for filing. The application shall be made on forms prescribed and furnished by the Department of State and shall set forth:

(a) The name of the foreign corporation and the jurisdiction under the law of which it is incorporated;

(b) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) That it revokes the authority of its registered agent to accept service on its behalf and appoints

the Department of State as its agent for service of process based on a cause of action arising during the time it was authorized to transact business in this state;

(d) A mailing address to which the Department of State may mail a copy of any process served on it under paragraph (c); and

(e) A commitment to notify the Department of State in the future of any change in its mailing address.

(3) After the withdrawal of the corporation is effective, service of process on the Department of State under this section is service on the foreign corporation. Upon receipt of the process, the Department of State shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (2).

**607.1530 Grounds for revocation of authority to transact business.**—The Department of State may commence a proceeding under s. 607.1531 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation has failed to file its annual report with the Department of State by 5 p.m. Eastern Time on the third Friday in September.

(2) The foreign corporation does not pay, within the time required by this act, any fees, taxes, or penalties imposed by this act or other law.

(3) The foreign corporation is without a registered agent or registered office in this state for 30 days or more.

(4) The foreign corporation does not notify the Department of State under s. 607.1508 or s. 607.1509 that its registered agent has resigned or that its registered office has been discontinued within 30 days of the resignation or discontinuance.

(5) An incorporator, director, officer, or agent of the foreign corporation signed a document she or he knew was false in any material respect with intent that the document be delivered to the Department of State for filing.

(6) The Department of State receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the jurisdiction under the law of which the

foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

(7) The foreign corporation has failed to answer truthfully and fully, within the time prescribed by this act, interrogatories propounded by the Department of State.

**607.1531 Procedure for and effect of revocation.**—

(1) If the Department of State determines that one or more grounds exist under s. 607.1530 for revocation of a certificate of authority, the Department of State shall serve the foreign corporation with notice of its intent to revoke the foreign corporation's certificate of authority. If the foreign corporation has provided the department with an electronic mail address, such notice shall be by electronic transmission. Revocation for failure to file an annual report shall occur on the fourth Friday in September of each year. The department shall issue a certificate of revocation to each revoked corporation. Issuance of the certificate of revocation may be by electronic transmission to any corporation that has provided the department with an electronic mail address.

(2) If the foreign corporation does not correct each ground for revocation under s. 607.1530(2)-(7) or demonstrate to the reasonable satisfaction of the Department of State that each ground determined by the Department of State does not exist within 60 days after issuance of notice, the Department of State shall revoke the foreign corporation's certificate of authority by issuing a certificate of revocation that recites the ground or grounds for revocation and its effective date. Issuance of the certificate of revocation may be by electronic transmission to any foreign corporation that has provided the department with an electronic mail address.

(3) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

**607.15315 Revocation; application for reinstatement.—**

(1)(a) A foreign corporation the certificate of authority of which has been revoked pursuant to s. 607.1531 may apply to the Department of State for reinstatement at any time after the effective date of revocation of authority. The application must:

1. Recite the name of the foreign corporation and the effective date of its revocation of authority;
2. State that the ground or grounds for revocation of authority either did not exist or have been eliminated and that no further grounds currently exist for revocation of authority;
3. State that the foreign corporation's name satisfies the requirements of s. 607.1506; and
4. State that all fees owed by the corporation and computed at the rate provided by law at the time the foreign corporation applies for reinstatement have been paid; or

(b) As an alternative, the foreign corporation may submit a current annual report, signed by the registered agent and an officer or director, which substantially complies with the requirements of paragraph (a).

(2) If the Department of State determines that the application contains the information required by subsection (1) and that the information is correct, it shall cancel the certificate of revocation of authority and prepare a certificate of reinstatement that recites its determination and prepare a certificate of reinstatement, file the original of the certificate, and serve a copy on the corporation under s. 607.0504(2).

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the revocation of authority and the foreign corporation resumes carrying on its business as if the revocation of authority had never occurred.

(4) The name of the foreign corporation the certificate of authority of which has been revoked is not available for assumption or use by another corporation until 1 year after the effective date of revocation of authority unless the corporation provides the Department of State with an affidavit executed as required by s. 607.0120 permitting the immediate assumption or use of the name by another corporation.

(5) If the name of the foreign corporation has been lawfully assumed in this state by another corporation, the Department of State shall require the foreign corporation to comply with s. 607.1506 before accepting its application for reinstatement.

**607.1532 Appeal from revocation.—**

(1) If the Department of State revokes the authority of any foreign corporation to transact business in this state pursuant to the provisions of this act, such foreign corporation may likewise appeal to the circuit court of the county where the registered office of such corporation in this state is situated by filing with the clerk of such court a petition setting forth a copy of its application for authority to transact business in this state and a copy of the certificate of revocation given by the Department of State, whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Department of State or direct the department to take such action as the court deems proper.

(2) Appeals from all final orders and judgments entered by the circuit court under this section in review of any ruling or decision of the Department of State may be taken as in other civil actions.

**607.1601 Corporate records.—**

(1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(2) A corporation shall maintain accurate accounting records.

(3) A corporation or its agent shall maintain a record of its shareholders in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and series of shares held by each.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

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- (5) A corporation shall keep a copy of the following records:
- (a) Its articles or restated articles of incorporation and all amendments to them currently in effect;
  - (b) Its bylaws or restated bylaws and all amendments to them currently in effect;
  - (c) Resolutions adopted by its board of directors creating one or more classes or series of shares and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;
  - (d) The minutes of all shareholders' meetings and records of all action taken by shareholders without a meeting for the past 3 years;
  - (e) Written communications to all shareholders generally or all shareholders of a class or series within the past 3 years, including the financial statements furnished for the past 3 years under s. 607.1620;
  - (f) A list of the names and business street addresses of its current directors and officers; and
  - (g) Its most recent annual report delivered to the Department of State under s. 607.1622.

**607.1602 Inspection of records by shareholders.—**

- (1) A shareholder of a 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 s. 607.1601(5) if the shareholder gives the corporation written notice of his or her demand at least 5 business days before the date on which he or she wishes to inspect and copy.
- (2) A shareholder of a 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 shareholder meets the requirements of subsection (3) and gives the corporation written notice of his or her demand at least 5 business days before the date on which he or she wishes to inspect and copy:
- (a) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the

- shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (1);
  - (b) Accounting records of the corporation;
  - (c) The record of shareholders; and
  - (d) Any other books and records.
- (3) A shareholder may inspect and copy the records described in subsection (2) only if:
- (a) The shareholder's demand is made in good faith and for a proper purpose;
  - (b) The shareholder describes with reasonable particularity his or her purpose and the records he or she desires to inspect; and
  - (c) The records are directly connected with the shareholder's purpose.
- (4) A shareholder of a Florida corporation, or a shareholder of a foreign corporation authorized to transact business in this state who resides in this state, is entitled to inspect and copy, during regular business hours at a reasonable location in this state specified by the corporation, a copy of the records of the corporation described in s. 607.1601(5)(b) and (f), if the shareholder gives the corporation written notice of his or her demand at least 15 business days before the date on which he or she wishes to inspect and copy.
- (5) This section does not affect:
- (a) The right of a shareholder to inspect and copy records under s. 607.0720 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant;
  - (b) The power of a court, independently of this act, to compel the production of corporate records for examination.
- (6) A corporation may deny any demand for inspection made pursuant to subsection (2) if the demand was made for an improper purpose, or if the demanding shareholder has within 2 years preceding his or her demand sold or offered for sale any list of shareholders of the corporation or any other corporation, has aided or abetted any person in procuring any list of shareholders for any such purpose, or has improperly used any information secured through any prior examination of the records of the corporation or any other corporation.
- (7) A shareholder may not sell or otherwise distribute any information or records inspected

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under this section, except to the extent that such use is for a proper purpose as defined in subsection (3). Any person who violates this provision shall be subject to a civil penalty of \$5,000.

(8) For purposes of this section, the term “shareholder” includes a beneficial owner whose shares are held in a voting trust or by a nominee on his or her behalf.

(9) For purposes of this section, a “proper purpose” means a purpose reasonably related to such person’s interest as a shareholder.

**607.1603 Scope of inspection right.—**

(1) A shareholder’s agent or attorney has the same inspection and copying rights as the shareholder he or she represents.

(2) The right to copy records under s. 607.1602 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production or reproduction of the records. If the records are kept in other than written form, the corporation shall convert such records into written form upon the request of any person entitled to inspect the same. The corporation shall bear the costs of converting any records described in s. 607.1601(5). The requesting shareholder shall bear the costs, including the cost of compiling the information requested, incurred to convert any records described in s. 607.1602(2).

(4) If requested by a shareholder, the corporation shall comply with a shareholder’s demand to inspect the records of shareholders under s. 607.1602(2)(c) by providing him or her with a list of its shareholders of the nature described in s. 607.1601(3). Such a list must be compiled as of the last record date for which it has been compiled or as of a subsequent date if specified by the shareholder.

**607.1604 Court-ordered inspection.—**

(1) If a corporation does not allow a shareholder who complies with s. 607.1602(1) or (4) to inspect and copy any records required by that subsection to be available for inspection, the circuit court in 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 shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with s. 607.1602(2) and (3), may apply to the circuit 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.

(3) If the court orders inspection or copying of the records demanded, it shall also order the corporation to pay the shareholder’s costs, including reasonable attorney’s fees, reasonably incurred to obtain the order and enforce its rights under this section unless the corporation, or the officer, director, or agent, as the case may be, proves that it or she or he refused inspection in good faith because it or she or he had a reasonable basis for doubt about the right of the shareholder to inspect or copy the records demanded.

(4) If the court orders inspection or copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

**607.1605 Inspection of records by directors.—**

(1) A director of a 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 committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(2) The circuit court of the county in which the 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 dispose of an application under this subsection on an expedited basis.

(3) If an order is issued, the court may include provisions protecting the 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, incurred in connection with the application.

**607.1620 Financial statements for shareholders.—**

(1) Unless modified by resolution of the shareholders within 120 days of the close of each fiscal year, a corporation shall furnish its shareholders annual financial statements which 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, an income statement for that year, and a statement of cash flows for that 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.

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

(a) Stating his or her reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

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

(3) Any corporation required by subsection (1) to furnish annual financial statements to its shareholders shall furnish such annual financial statements to each shareholder within 120 days after the close of each fiscal year or within such

additional time thereafter as is reasonably necessary to enable the corporation to prepare its financial statements if, for reasons beyond the corporation's control, it is unable to prepare its financial statements within the prescribed period. Thereafter, on written request from a shareholder who was not furnished the statements, the corporation shall furnish him or her the latest annual financial statements.

(4) If a corporation does not comply with the shareholder's request for annual financial statements pursuant to this section within 30 days of delivery of such request to the corporation, the circuit court in the county where the corporation's principal office (or, if none in this state, its registered office) is located may, upon application of the shareholder, summarily order the corporation to furnish such financial statements. If the court orders the corporation to furnish the shareholder with the financial statements demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable attorney's fees, reasonably incurred to obtain the order and otherwise enforce its rights under this section.

(5) The requirement to furnish annual financial statements as described in this section shall be satisfied by sending such annual financial statements by mail or electronic transmission. If a corporation has an outstanding class of securities registered under s. 12 of the Securities Exchange Act of 1934, as amended, the requirement to furnish annual financial statements may be satisfied by complying with 17 C.F.R. s. 240.14a-16, as amended, with respect to the obligation of a corporation to furnish an annual financial report to shareholders pursuant to 17 C.F.R. s. 240.14a-3(b), as amended.

**607.1621 Other reports to shareholders.—**

(1) If a corporation indemnifies or advances expenses to any director, officer, employee, or agent under s. 607.0850 otherwise than by court order or action by the shareholders or by an insurance carrier pursuant to insurance maintained by the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next

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shareholders' meeting, or prior to such meeting if the indemnification or advance occurs after the giving of such notice but prior to the time such meeting is held, which report shall include a statement specifying the persons paid, the amounts paid, and the nature and status at the time of such payment of the litigation or threatened litigation.

(2) If a corporation issues or authorizes the issuance of shares for promises to render services in the future, the corporation shall report in writing to the shareholders the number of shares authorized or issued, and the consideration received by the corporation, with or before the notice of the next shareholders' meeting.

**607.1622 Annual report for Department of State.—**

(1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the Department of State for filing a sworn annual report on such forms as the Department of State prescribes that sets forth:

- (a) The name of the corporation and the state or country under the law of which it is incorporated;
- (b) The date of incorporation or, if a foreign corporation, the date on which it was admitted to do business in this state;
- (c) The address of its principal office and the mailing address of the corporation;
- (d) The corporation's federal employer identification number, if any, or, if none, whether one has been applied for;
- (e) The names and business street addresses of its directors and principal officers;
- (f) The street address of its registered office and the name of its registered agent at that office in this state;
- (g) Language permitting a voluntary contribution of \$5 per taxpayer, which contribution shall be transferred into the <sup>1</sup>Election Campaign Financing Trust Fund. A statement providing an explanation of the purpose of the trust fund shall also be included; and
- (h) Such additional information as may be necessary or appropriate to enable the Department of State to carry out the provisions of this act.

- (2) Proof to the satisfaction of the Department of State that on or before May 1 such report was deposited in the United States mail in a sealed envelope, properly addressed with postage prepaid, shall be deemed compliance with this requirement.
- (3) If an annual report does not contain the information required by this section, the Department of State shall promptly notify the reporting domestic or foreign corporation in writing 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 Department of State within 30 days after the effective date of notice, it is deemed to be timely filed.
- (4) Each report shall be executed by the corporation by an officer or director or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee, and the signing thereof shall have the same legal effect as if made under oath, without the necessity of appending such oath thereto.
- (5) The first annual report must be delivered to the Department of State between January 1 and May 1 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the Department of State between January 1 and May 1 of the subsequent calendar years.
- (6) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.
- (7) If an additional updated report is received, the department shall file the document and make the information contained therein part of the official record.
- (8) Any corporation failing to file an annual report which complies with the requirements of this section shall not be permitted to maintain or defend any action in any court of this state until such report is filed and all fees and taxes due under this act are paid and shall be subject to dissolution or cancellation of its certificate of authority to do business as provided in this act.
- (9) The department shall prescribe the forms on which to make the annual report called for in this

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section and may substitute the uniform business report, pursuant to s. 606.06, as a means of satisfying the requirement of this part.

**607.1701 Application to existing domestic corporation.**—This act applies to all domestic corporations in existence on July 1, 1990, that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

**607.1702 Application to qualified foreign corporations.**—A foreign corporation authorized to transact business in this state on July 1, 1990, is subject to this act but is not required to obtain a new certificate of authority to transact business under this act.

**607.1711 Application to foreign and interstate commerce.**—The provisions of this act apply to commerce with foreign nations and among the several states only insofar as the same may be permitted under the Constitution and laws of the United States.

**607.1801 Domestication of foreign corporations.**—

(1) As used in this section, the term “corporation” includes any incorporated organization, private law corporation (whether or not organized for business purposes), public law corporation, partnership, proprietorship, joint venture, foundation, trust, association, or similar entity.

(2) Any foreign corporation may become domesticated in this state by filing with the Department of State:

(a) A certificate of domestication which shall be executed in accordance with subsection (7) and filed and recorded in accordance with s. 607.0120; and

(b) Articles of incorporation, which shall be executed, filed, and recorded in accordance with ss. 607.0120 and 607.0202.

(3) The certificate of domestication shall certify:

(a) The date on which and jurisdiction where the corporation was first formed, incorporated, or otherwise came into being;

(b) The name of the corporation immediately prior to the filing of the certificate of domestication;

(c) The name of the corporation as set forth in its articles of incorporation filed in accordance with paragraph (2)(b); and

(d) The jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the corporation, or any other equivalent thereto under applicable law, immediately prior to the filing of the certificate of domestication.

(4) Upon filing with the Department of State of the certificate of domestication and articles of incorporation, the corporation shall be domesticated in this state, and the corporation shall thereafter be subject to this act, except that notwithstanding the provision of s. 607.0203 the existence of the corporation shall be deemed to have commenced on the date the corporation commenced its existence in the jurisdiction in which the corporation was first formed, incorporated, or otherwise came into being.

(5) The domestication of any corporation in this state shall not be deemed to affect any obligations or liabilities of the corporation incurred prior to its domestication.

(6) The filing of a certificate of domestication shall not affect the choice of law applicable to the corporation, except that, from the date the certificate of domestication is filed, the law of this state, including this act, shall apply to the corporation to the same extent as if the corporation has been incorporated as a corporation of this state on that date.

(7) The certificate of domestication shall be signed by any corporation officer, director, trustee, manager, partner, or other person performing functions equivalent to those of an officer or director, however named or described, and who is authorized to sign the certificate of domestication on behalf of the corporation.

**607.1805 Procedures for conversion to professional service corporation.**—A corporation that is organized for profit under the laws of this state and that is engaged solely in carrying out the professional services provided by a corporation organized under chapter 621 may change its corporate nature to that of a professional service corporation if it complies with chapter 621.

**607.1904 Estoppel.**—No body of persons acting as a corporation shall be permitted to set up the lack of legal organization as a defense to an action against them as a corporation, nor shall any person sued on a contract made with the corporation or sued for an injury to its property or a wrong done to its interests be permitted to set up the lack of such legal organization in his or her defense.

**607.1907 Effect of repeal of prior acts.**—

- (1) Except as provided in subsection (2), the repeal of a statute by this act does not affect:
- (a) The operation of the statute or any action taken under it before its repeal, including, without limiting the generality of the foregoing, the continuing validity of any provision of the articles of incorporation or bylaws of a corporation authorized by the statute at the time of its adoption;
  - (b) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;
  - (c) Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;
  - (d) Any proceeding, merger, consolidation, sale of assets, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, merger, consolidation, sale of assets, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.
- (2) If a penalty or punishment imposed for violation of a statute repealed by this act is reduced by this act, the penalty or punishment if not already imposed shall be imposed in accordance with this act.

**607.193 Supplemental corporate fee.**—

- (1) In addition to any other taxes imposed by law, an annual supplemental corporate fee of \$88.75 is imposed on each business entity that is authorized to transact business in this state and is required to file an annual report with the Department of State under s. 607.1622, s. 608.4511, or s. 620.1210.
- (2)(a) The business entity shall remit the supplemental corporate fee to the Department of State at the time it files the annual report required by s. 607.1622, s. 608.4511, or s. 620.1210.
- (b) In addition to the fees levied under ss. 607.0122, 608.452, and 620.1109 and the supplemental corporate fee, a late charge of \$400 shall be imposed if the supplemental corporate fee is remitted after May 1 except in circumstances in which a business entity was administratively dissolved or its certificate of authority was revoked due to its failure to file an annual report and the entity subsequently applied for reinstatement and paid the applicable reinstatement fee.
- (3) The Department of State shall adopt rules and prescribe forms necessary to carry out the purposes of this section.



FLORIDA DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS

## INSTRUCTIONS FOR A PROFIT CORPORATION

The following are instructions, a cover letter and sample articles of incorporation pursuant to Chapter 607 and 621 Florida Statutes (F.S.).

**NOTE: THIS IS A BASIC FORM MEETING MINIMAL REQUIREMENTS FOR FILING ARTICLES OF INCORPORATION.**

The Division of Corporations strongly recommends that corporate documents be reviewed by your legal counsel. The Division is a filing agency and as such does not render any legal, accounting, or tax advice.

This office does not provide you with corporate seals, minute books, or stock certificates. It is the responsibility of the corporation to secure these items once the corporation has been filed with this office.

Questions concerning S Corporations should be directed to the Internal Revenue Service by telephoning 1-800-829-1040. This is an IRS designation, which is not determined by this office.

A preliminary search for name availability can be made on the Internet through the Division's records at [www.sunbiz.org](http://www.sunbiz.org). Preliminary name searches and name reservations are no longer available from the Division of Corporations. You are responsible for any name infringement that may result from your corporate name selection.

Pursuant to Chapter 607 or 621 F.S., the articles of incorporation **must** set forth the following:

Article I: The name of the corporation **must** include a corporate suffix such as Corporation, Corp., Incorporated, Inc., Company, or Co.

A Professional Association **must** contain the word "chartered" or "professional association" or "P.A."

Article II: The principal place of business and mailing address of the corporation. The principal address must be a **street** address. The mailing address, if different, can be a P.O. Box address.

Article III: **Specific Purpose for a "Professional Corporation"**

Article IV: The number of shares of stock that this corporation is authorized to have **must** be stated.

Article V: The names, address and titles of the Directors/Officers (**optional**). The names of officers/directors may be required to apply for a license, open a bank account, etc.

Article VI: The name and **Florida Street address** (P.O. Box **NOT** acceptable) of the initial Registered Agent. The Registered Agent **must** sign in the space provided and type or print his/her name accepting the designation as registered agent.

Article VII: The name and address of the Incorporator. The Incorporator **must** sign in the space provided and type or print his/her name below signature.

**The “incorporator” is the person who prepares and signs the Articles of Incorporation and then submits them for filing to the Division of Corporations. The function of the incorporator usually ends after the corporation is filed.**

**An Effective Date:** Add a **separate** article if applicable or necessary: An effective date **may** be added to the Articles of Incorporation, otherwise the date of receipt will be the file date. (An effective date can not be more than five (5) business days prior to the date of receipt or ninety (90) days after the date of filing). **If a corporation is filed anytime prior to December 31<sup>st</sup>, an annual report will be due on January 1<sup>st</sup>.**

**Important Information About the Requirement to File an Annual Report**

All Florida Profit Corporations must file an Annual Report yearly to maintain “active” status. The first report is due in the year following formation. The report must be filed electronically online between January 1<sup>st</sup> and May 1<sup>st</sup>. The fee for the annual report is \$150. After May 1<sup>st</sup> a \$400 late fee is added to the annual report filing fee. “Annual Report Reminder Notices” are sent to the e-mail address you provide us when you submit this document for filing. To file any time after January 1<sup>st</sup>, go to our website at [www.sunbiz.org](http://www.sunbiz.org). There is no provision to waive the late fee. Be sure to file before May 1<sup>st</sup>.

\*\*\*\*\*

The fee for filing a profit corporation is:

- Filing Fee \$35.00
- Designation of Registered Agent \$35.00
- Certified Copy (optional) \$ 8.75 (plus \$1 per page for each page over 8, not to exceed a maximum of \$52.50).
- Certificate of Status (optional) \$ 8.75

**Make checks payable to: Florida Department of State**

**Mailing Address:**  
Department of State  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314  
(850) 245-6052

**Street Address:**  
Department of State  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301  
(850) 245-6052

# COVER LETTER

Department of State  
New Filing Section  
Division of Corporations  
P. O. Box 6327  
Tallahassee, FL 32314

**SUBJECT:** \_\_\_\_\_  
(PROPOSED CORPORATE NAME – MUST INCLUDE SUFFIX)

Enclosed are an original and one (1) copy of the articles of incorporation and a check for:

\$70.00 Filing Fee  
 \$78.75 Filing Fee & Certificate of Status

<input type="checkbox"/> \$78.75 Filing Fee & Certified Copy	<input type="checkbox"/> \$87.50 Filing Fee, Certified Copy & Certificate of Status
<b>ADDITIONAL COPY REQUIRED</b>	

FROM: \_\_\_\_\_  
Name (Printed or typed)

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State & Zip

\_\_\_\_\_  
Daytime Telephone number

\_\_\_\_\_  
E-mail address: (to be used for future annual report notification)

**NOTE: Please provide the original and one copy of the articles.**

**ARTICLES OF INCORPORATION**

In compliance with Chapter 607 and/or Chapter 621, F.S. (Profit)

**ARTICLE I NAME**

The name of the corporation shall be: \_\_\_\_\_

**ARTICLE II PRINCIPAL OFFICE**

Principal street address

Mailing address, if different is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE III PURPOSE**

The purpose for which the corporation is organized is: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE IV SHARES**

The number of shares of stock is: \_\_\_\_\_

**ARTICLE V INITIAL OFFICERS AND/OR DIRECTORS**

Name and Title: \_\_\_\_\_ Name and Title: \_\_\_\_\_

Address \_\_\_\_\_ Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Name and Title: \_\_\_\_\_ Name and Title: \_\_\_\_\_

Address \_\_\_\_\_ Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Name and Title: \_\_\_\_\_ Name and Title: \_\_\_\_\_

Address \_\_\_\_\_ Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Name and Title: \_\_\_\_\_ Name and Title: \_\_\_\_\_

Address \_\_\_\_\_ Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**ARTICLE VI REGISTERED AGENT**

The **name and Florida street address** (P.O. Box NOT acceptable) of the registered agent is:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**ARTICLE VII INCORPORATOR**

The **name and address** of the Incorporator is:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

*Having been named as registered agent to accept service of process for the above stated corporation at the place designated in this certificate, I am familiar with and accept the appointment as registered agent and agree to act in this capacity*

\_\_\_\_\_

Required Signature/Registered Agent

\_\_\_\_\_

Date

*I submit this document and affirm that the facts stated herein are true. I am aware that the false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S.*

\_\_\_\_\_

Required Signature/Incorporator

\_\_\_\_\_

Date



FLORIDA DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS

Attached are the forms and instructions to register a foreign profit corporation to transact business in Florida. The requirements are as follows:

- Pursuant to section 607.1503(1), Florida Statutes, the attached application must be completed in its entirety.
- The corporation must submit an original certificate of existence, no more than 90 days old, duly authenticated by the Secretary of State or the proper official having custody of corporate records in the state or country under the law of which it is incorporated. A photocopy is not acceptable. If the certificate is in a foreign language, a translation of the certificate under oath of the translator must be submitted.
- There is a \$70.00 registration fee and a letter of acknowledgment will be issued free of charge upon registration.
- Certification fees are optional. Please submit an additional \$8.75 if a certificate of status is needed. The fee for a certified copy of the application is \$8.75 (plus \$1 per page for each page over 8, not to exceed a maximum of \$52.50). Please check the appropriate box on the COVER letter and send one check for the total amount made payable to the Florida Department of State.
- The COVER letter included in this packet should be completed and submitted along with the certificate, application and check. Both the mailing address and courier address are noted in the COVER letter.
- **Important Information About the Requirement to File an Annual Report**  
All Profit Corporations must file an Annual Report yearly to maintain “active” status. The first report is due in the year following formation. The report must be filed electronically online between January 1<sup>st</sup> and May 1<sup>st</sup>. The fee for the annual report is \$150. After May 1<sup>st</sup> a \$400 late fee is added to the annual report filing fee. “Annual Report Reminder Notices” are sent to the e-mail address you provide us when you submit this document for filing. To file any time after January 1<sup>st</sup>, go to our website at [www.sunbiz.org](http://www.sunbiz.org). There is no provision to waive the late fee. Be sure to file before May 1<sup>st</sup>.

Any further inquiries concerning this matter should be directed to the New Filing Section by calling (850) 245-6052 or writing the New Filing Section, Division of Corporations, P.O. Box 6327, Tallahassee, FL 32314.

# COVER LETTER

**TO:** New Filing Section  
Division of Corporations

**SUBJECT:** \_\_\_\_\_  
Name of corporation - must include suffix

Dear Sir or Madam:

The enclosed "Application by Foreign Corporation for Authorization to Transact Business in Florida," "Certificate of Existence," or "Certificate of Good Standing" and check are submitted to register the above referenced foreign corporation to transact business in Florida.

Please return all correspondence concerning this matter to the following:

\_\_\_\_\_  
Name of Person

\_\_\_\_\_  
Firm/Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State and Zip code

\_\_\_\_\_  
E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

\_\_\_\_\_ at (\_\_\_\_\_) \_\_\_\_\_  
Name of Person Area Code & Daytime Telephone Number

**STREET/COURIER ADDRESS:**

New Filing Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

**MAILING ADDRESS:**

New Filing Section  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

Enclosed is a check for the following amount:

- \$70.00 Filing Fee
- \$78.75 Filing Fee & Certificate of Status
- \$78.75 Filing Fee & Certified Copy
- \$87.50 Filing Fee, Certificate of Status & Certified Copy

**APPLICATION BY FOREIGN CORPORATION FOR AUTHORIZATION TO TRANSACT BUSINESS IN FLORIDA**

*IN COMPLIANCE WITH SECTION 607.1503, FLORIDA STATUTES, THE FOLLOWING IS SUBMITTED TO REGISTER A FOREIGN CORPORATION TO TRANSACT BUSINESS IN THE STATE OF FLORIDA.*

1. \_\_\_\_\_  
(Enter name of corporation; must include "INCORPORATED," "COMPANY," "CORPORATION," "Inc.," "Co.," "Corp," "Inc," "Co," or "Corp.")

\_\_\_\_\_  
(If name unavailable in Florida, enter alternate corporate name adopted for the purpose of transacting business in Florida)

2. \_\_\_\_\_ 3. \_\_\_\_\_  
(State or country under the law of which it is incorporated) (FEI number, if applicable)

4. \_\_\_\_\_ 5. \_\_\_\_\_  
(Date of incorporation) (Duration: Year corp. will cease to exist or "perpetual")

6. \_\_\_\_\_  
(Date first transacted business in Florida, if prior to registration)  
(SEE SECTIONS 607.1501 & 607.1502, F.S., to determine penalty liability)

7. \_\_\_\_\_  
(Principal office address)

\_\_\_\_\_  
(Current mailing address)

8. \_\_\_\_\_  
(Purpose(s) of corporation authorized in home state or country to be carried out in state of Florida)

9. Name and street address of Florida registered agent: (P.O. Box NOT acceptable)

Name: \_\_\_\_\_

Office Address: \_\_\_\_\_

\_\_\_\_\_, Florida \_\_\_\_\_  
(City) (Zip code)

**10. Registered agent's acceptance:**

*Having been named as registered agent and to accept service of process for the above stated corporation at the place designated in this application, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.*

\_\_\_\_\_  
(Registered agent's signature)

11. Attached is a certificate of existence duly authenticated, not more than 90 days prior to delivery of this application to the Department of State, by the Secretary of State or other official having custody of corporate records in the jurisdiction under the law of which it is incorporated.

12. Names and business addresses of officers and/or directors:

**A. DIRECTORS**

Chairman: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Vice Chairman: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Director: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Director: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**B. OFFICERS**

President: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Vice President: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Secretary: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Treasurer: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**NOTE:** If necessary, you may attach an addendum to the application listing additional officers and/or directors.

13. \_\_\_\_\_

Signature of Director or Officer

The officer or director signing this document (and who is listed in number 12 above) affirms that the facts stated herein are true and that he or she is aware that false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S.

14. \_\_\_\_\_

(Typed or printed name and capacity of person signing application)

## PROFESSIONAL SERVICE CORPORATIONS

- 621.01 Legislative intent.
- 621.02 Short title.
- 621.03 Definitions.
- 621.04 Exemptions.
- 621.05 Corporation organization.
- 621.051 Limited liability company organization.
- 621.06 Rendition of professional services, limitations.
- 621.07 Liability of officers, agents, employees, shareholders, members, and corporation or limited liability company.
- 621.08 Limitation on corporation's or limited liability company's business transactions; investment of funds.
- 621.09 Limitation on issuance and transfer of ownership.
- 621.10 Disqualification of member, shareholder, officer, agent, or employee; administrative dissolution.
- 621.11 Alienation of shares and ownership interests; restrictions.
- 621.12 Identification with individual shareholders or individual members.
- 621.13 Applicability of chapters 607 and 608.
- 621.14 Construction of law.

**621.01 Legislative intent.**—It is the legislative intent to provide for the incorporation or organization as a limited liability company of an individual or group of individuals, professional corporations, or professional limited liability companies to render the same professional service to the public for which such individuals, individual shareholders of professional corporations, or members of limited liability companies are required by law to be licensed or to obtain other legal authorization.

**621.02 Short title.**—This act may be cited as the “Professional Service Corporation and Limited Liability Company Act.”

**621.03 Definitions.**—As used in this act the following words shall have the meaning indicated:

(1) The term “professional service” means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization. By way of example and without limiting the generality thereof, the personal services which come within the provisions of this act are the personal services rendered by certified public accountants, public accountants, chiropractic physicians, dentists, osteopathic physicians, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatric physicians, chiropractists, architects, veterinarians, attorneys at law, and life insurance agents.

(2) The term “professional corporation” means a corporation which is organized under this act for the sole and specific purpose of rendering professional service and which has as its shareholders only other professional corporations, professional limited liability companies, or individuals who themselves are duly licensed or otherwise legally authorized to render the same professional service as the corporation.

(3) The term “professional limited liability company” means a limited liability company that is organized under this act for the sole and specific purpose of rendering professional service and that has as its members only other professional limited liability companies, professional corporations, or individuals who themselves are duly licensed or otherwise legally authorized to render the same professional service as the limited liability company.

**621.04 Exemptions.**—This act shall not apply to any individuals or groups of individuals within this state who prior to the passage of this act were permitted to organize a corporation or limited liability company and perform personal services to the public by the means of a corporation or limited liability company, and this act shall not apply to any corporations or limited liability companies organized by such individual or group of individuals prior to the passage of this act; provided, however, an individual or group of

## PROFESSIONAL SERVICE CORPORATIONS

individuals or any such corporation or limited liability company may bring themselves and such corporation or limited liability company within the provisions of this act by amending the articles of incorporation, if a corporation, or the articles of organization, if a limited liability company, in such a manner so as to be consistent with all the provisions of this act and by affirmatively stating in the amended articles that the shareholders or members have elected to bring the corporation or limited liability company within the provisions of this act.

**621.05 Corporation organization.**—One or more individuals, professional corporations, or professional limited liability companies, in any combination, duly licensed or otherwise legally authorized to render the same professional services may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of chapter 607 for the sole and specific purpose of rendering the same and specific professional service.

**621.051 Limited liability company organization.**—A group of professional service corporations, professional limited liability companies, or individuals, in any combination, duly licensed or otherwise legally authorized to render the same professional services may organize and become members of a professional limited liability company for pecuniary profit under the provisions of chapter 608 for the sole and specific purpose of rendering the same and specific professional service.

**621.06 Rendition of professional services, limitations.**—No corporation or limited liability company organized under this act may render professional services except through its members, officers, employees, and agents who are duly licensed or otherwise legally authorized to render such professional services; provided, however, this provision shall not be interpreted to include in the term “employee,” as used herein, clerks,

secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required; and provided further, that nothing contained in this act shall be interpreted to require that the right of an individual to be a shareholder of a corporation or a member of a limited liability company organized under this act, or to organize such a corporation or limited liability company, is dependent upon the present or future existence of an employment relationship between him or her and such corporation or limited liability company, or his or her present or future active participation in any capacity in the production of the income of such corporation or limited liability company or in the performance of the services rendered by such corporation or limited liability company.

**621.07 Liability of officers, agents, employees, shareholders, members, and corporation or limited liability company.**—Nothing contained in this act shall be interpreted to abolish, repeal, modify, restrict, or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional service and to the standards for professional conduct; provided, however, that any officer, agent, member, manager, or employee of a corporation or limited liability company organized under this act shall be personally liable and accountable only for negligent or wrongful acts or misconduct committed by that person, or by any person under that person’s direct supervision and control, while rendering professional service on behalf of the corporation or limited liability company to the person for whom such professional services were being rendered; and provided further that the personal liability of shareholders of a corporation, or members of a limited liability company, organized under this act, in their capacity as shareholders or members of such corporation or

## PROFESSIONAL SERVICE CORPORATIONS

limited liability company, shall be no greater in any aspect than that of a shareholder-employee of a corporation organized under chapter 607 or a member-employee of a limited liability company organized under chapter 608. The corporation or limited liability company shall be liable up to the full value of its property for any negligent or wrongful acts or misconduct committed by any of its officers, agents, members, managers, or employees while they are engaged on behalf of the corporation or limited liability company in the rendering of professional services.

**621.08 Limitation on corporation's or limited liability company's business transactions; investment of funds.**—No corporation or limited liability company organized under this act shall engage in any business other than the rendering of the professional services for which it was specifically organized; provided, however, nothing in this act or in any other provisions of existing law applicable to corporations or limited liability companies shall be interpreted to prohibit such corporation or limited liability company from investing its funds in real estate, mortgages, stocks, bonds, or any other type of investments, or from owning real or personal property necessary for the rendering of professional services.

**621.09 Limitation on issuance and transfer of ownership.**—

(1) No corporation organized under the provisions of this act may issue any of its capital stock to anyone other than a professional corporation, a professional limited liability company, or an individual who is duly licensed or otherwise legally authorized to render the same specific professional services as those for which the corporation was incorporated. No shareholder of a corporation organized under this act shall enter into a voting trust agreement or any other type agreement vesting another person with the authority to exercise the voting power of any or all of that person's stock.

(2) No person shall be admitted as a member of a limited liability company organized under this act, unless such person is a professional corporation, a professional limited liability company, or an individual, each of which must be duly licensed or otherwise legally authorized to render the same specific professional services as those for which the limited liability company is organized. No member of a limited liability company organized under this act shall enter into any type of agreement vesting another person with the authority to exercise any of that member's voting power in the limited liability company.

**621.10 Disqualification of member, shareholder, officer, agent, or employee; administrative dissolution.**—If any member, officer, shareholder, agent, or employee of a corporation or limited liability company organized under this chapter who has been rendering professional service to the public becomes legally disqualified to render such professional services or accepts employment that, pursuant to existing law, places restrictions or limitations upon that person's continued rendering of such professional services, that person shall sever all employment with, and financial interests in, such corporation or limited liability company forthwith. A corporation's or limited liability company's failure to require compliance with this provision shall constitute a ground for the judicial dissolution of the corporation or limited liability company. When a corporation's or limited liability company's failure to comply with this provision is brought to the attention of the Department of State, the department forthwith shall certify that fact to the Department of Legal Affairs for appropriate action to dissolve the corporation or limited liability company.

## PROFESSIONAL SERVICE CORPORATIONS

### **621.11 Alienation of shares and ownership interests; restrictions.—**

- (1) No shareholder of a corporation organized under this act may sell or transfer her or his shares in such corporation except to another professional corporation, professional limited liability company, or individual, each of which must be eligible to be a shareholder of such corporation.
- (2) No member of a limited liability company organized under this act may sell or transfer ownership interest in the limited liability company except to another professional corporation, professional limited liability company, or individual, each of which must be eligible to be a member of the limited liability company.

### **621.12 Identification with individual shareholders or individual members.—**

- (1) The name of a corporation or limited liability company organized under this act may contain the last names of some or all of the individual shareholders or individual members and may contain the last names of retired or deceased former individual shareholders or individual members of the corporation, limited liability company, a predecessor corporation or limited liability company, or partnership.
- (2) The name shall also contain:
  - (a) The word “chartered”; or
  - (b)1. In the case of a professional corporation, the words “professional association” or the abbreviation “P.A.”; or
  2. In the case of a professional limited liability company, the words “professional limited company” or the abbreviation “P.L.,” in lieu of the words “limited company” or the abbreviation “L.C.” as otherwise required under s. 608.406.
- (3) In the case of a corporation, the use of the word “company,” “corporation,” or “incorporated” or any other word, abbreviation, affix, or prefix indicating that it is a corporation in the corporate name of a corporation organized under this act, other than the word “chartered” or the words “professional association” or the abbreviation “P.A.,” is specifically prohibited.

(4) It shall be permissible, however, for the corporation or limited liability company to render professional services and to exercise its authorized powers under a name which is identical to its name except that the word “chartered,” the words “professional association” or “professional limited company,” or the abbreviations “P.A.” or “P.L.” may be omitted, provided that the corporation or limited liability company has first registered the name to be so used in the manner required for the registration of fictitious names.

### **621.13 Applicability of chapters 607 and 608.—**

- (1) Chapter 607 is applicable to a corporation organized pursuant to this act except to the extent that any of the provisions of this act are interpreted to be in conflict with the provisions of chapter 607. In such event, the provisions and sections of this act shall take precedence with respect to a corporation organized pursuant to the provisions of this act.
- (2) Chapter 608 is applicable to a limited liability company organized pursuant to this act except to the extent that any of the provisions of this act are interpreted to be in conflict with the provisions of chapter 608. In such event, the provisions and sections of this act shall take precedence with respect to a limited liability company organized pursuant to the provisions of this act.
- (3) A professional corporation or limited liability company heretofore or hereafter organized under this act may change its business purpose from the rendering of professional service to provide for any other lawful purpose by amending its certificate of incorporation in the manner required for an original incorporation under chapter 607 or by amending its certificate of organization in the manner required for an original organization under chapter 608. However, such an amendment, when filed with and accepted by the Department of State, shall remove such corporation or limited liability company from the provisions of this chapter including, but not limited to, the right to

## PROFESSIONAL SERVICE CORPORATIONS

practice a profession. A change of business purpose shall not have any effect on the continued existence of the corporation or limited liability company.

**621.14 Construction of law.**—The provisions of this act shall not be construed as repealing, modifying, or restricting the applicable provisions of law relating to incorporations, organization of limited liability companies, sales of securities, or regulating the several professions enumerated in this act except insofar as such laws conflict with the provisions of this act.

## CORPORATION FEES

### PROFIT & NOT FOR PROFIT FLORIDA & FOREIGN CORPORATIONS

Filing Fees	\$ 35.00
Registered Agent Designation	\$ 35.00
*Certified Copy (optional)	(\$ 8.75)*
	\$ 78.75

Amendment of any record	\$ 35.00
Annual Report (profit)	\$150.00
Annual Report (profit, received after May 1)	\$550.00
Annual Report (non profit)	\$ 61.25
Article of Correction	\$ 35.00
Certificate of Status	\$ 8.75
Certified Copy of any record	\$ 8.75
<i>* for the first 8 pages, and \$1 for each additional page, not to exceed a maximum of \$52.50.</i>	
Change of Registered Agent	\$ 35.00
Dissolution & Withdrawal	\$ 35.00
Foreign Name Registration	\$ 87.50

Foreign Name Renewal	\$ 87.50
Merger (per party)	\$ 35.00
Reinstatement	\$600.00
Resignation of Registered Agent (active corporation)	\$ 87.50
(inactive corporation)	\$ 35.00
Revocation of Dissolution	\$ 35.00
Substitute Service of Process (Chapter 48, F.S.)	\$ 8.75

### REQUIREMENTS FOR FILING AN S CORPORATION WITH THE INTERNAL REVENUE SERVICE

Individuals interested in obtaining S corporation status should contact the Internal Revenue Service for additional information **before** filing with the Division of Corporations. For information call the IRS at 1-800-TAX-FORM (1-800-829-3676). The following is an excerpt from IRS publication 589, Tax Information on S Corporations.

*A corporation is taxed on its income under corporate tax rules. When it distributes dividends to its shareholders, the shareholders include these already taxed amounts in their income. In effect, corporate income is taxed twice, once to the corporation and again to the shareholders.*

*However, an eligible domestic corporation can avoid double taxation by electing to be treated as an S corporation under the rules of Subchapter S of the Internal Revenue Code. In this way, the S corporation passes its items of income, loss, deduction, and credits through its shareholders to be included on their separate returns. Individual shareholders may benefit from a reduction in their taxable income during the first years of the corporation's existence when it may be operating at a loss.*

*A corporation may become an S corporation if:*

- 1. It meets the requirements of S corporation status.*
- 2. All its shareholders consent to S corporation status.*
- 3. It uses a permitted tax year, or elects to use a tax year other than a permitted tax year.*
- 4. It files Form 2553, Election by a Small Business Corporation, to indicate it chooses S corporation status.*

*To qualify for S corporation status, a corporation must meet all the following requirements:*

- 1. It must be a domestic corporation. It must be a corporation that is either organized in the United States or organized under federal or state law. The term "corporation" includes a joint-stock company, certain insurance companies, or an association that has the characteristics of a corporation.*
- 2. It must have only one class of stock.*
- 3. It must have no more than 35 shareholders.*
- 4. It must have as shareholders only individuals, estates (including estates of individuals in bankruptcy), and certain shareholders in an S corporation.*
- 5. It must have shareholders who are citizens or residents of the United States. Nonresident aliens cannot be shareholders.*

To receive forms, or additional information concerning S corporation requirements, contact the Internal Revenue Service at 1-800-TAX-FORM (1-800-829-3676).

Florida Department of State  
 Division of Corporations  
 Internet Address (<http://www.sunbiz.org>)

DIRECTOR'S OFFICE	(850) 245-6000
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BUREAU OF COMMERCIAL INFORMATION (Chief)	(850) 245-6862
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Certification Section----- (850) 245-6053  
**Function: Certified copies of all division records, certificates of status and service of process pursuant to Chapter 48, Florida Statutes.**

Corporate Information----- [www.sunbiz.org](http://www.sunbiz.org)  
**You may access any of the division Corporate information and download filing forms.**

Public Assistance Section----- (850) 245-6963  
**Function: Walk-in Filings and information requests.**

Electronic Filing and Internet Support ----- (850) 245-6939  
**Function: Information on electronic filing and on-line access systems maintained by the Division of Corporations.**

BUREAU OF COMMERCIAL RECORDING (Chief)	(850) 245-6900
--	----------------

Amendment Section ----- (850) 245-6050  
**Function: All amendments and mergers to domestic and foreign corporations; corporate dissolutions and withdrawals; resignation of officers, directors and registered agents; and corporate registered agent changes.**

New Filing Section ----- (850) 245-6052  
**Function: All new domestic profit and not for profit corporate filings.**

Partnership/Trademark/ Limited Liability Company Registration Section ----- (850) 245-6051  
**Function: All limited partnership, limited liability company, alien business organization, trademark/service mark, partnership, and registered limited liability partnership filings; limited partnership and limited liability company annual reports and reinstatements. Tax lien registrations, qualification of all foreign corporations, foreign name registrations and renewals.**

Annual Report Section ----- (850) 245-6056  
**Function: Corporation annual reports.**

Reinstatement Section ----- (850) 245-6059  
**Function: Corporation reinstatements.**

Fictitious Names Section (DBA's) ----- (850) 245-6058  
**Function: Fictitious name applications, re-registrations and cancellations.**

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### **607.1501 Authority of foreign corporation to transact business required.—**

- (1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Department of State.
- (2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):
  - (a) Maintaining, defending, or settling any proceeding.
  - (b) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs.
  - (c) Maintaining bank accounts.
  - (d) Maintaining officers or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities.
  - (e) Selling through independent contractors.
  - (f) Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this state before they become contracts.
  - (g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.
  - (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.
  - (i) Transacting business in interstate commerce.
  - (j) Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature.
  - (k) Owning and controlling a subsidiary corporation incorporated in or transacting business within this state or voting the stock of any corporation which it has lawfully acquired.
  - (l) Owning a limited partnership interest in a limited partnership that is doing business within this state, unless such limited partner manages or controls the partnership or exercises the powers and duties of a general partner.
  - (m) Owning, without more, real or personal property.

(3) The list of activities in subsection (2) is not exhaustive.

(4) This section has no application to the question of whether any foreign corporation is subject to service of process and suit in this state under any law of this state.

### **607.1502 Consequences of transacting business without authority.—**

- (1) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.
- (2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.
- (3) A court may stay a proceeding commenced by a foreign corporation or its successor or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.
- (4) A foreign corporation which transacts business in this state without authority to do so shall be liable to this state for the years or parts thereof during which it transacted business in this state without authority in an amount equal to all fees and taxes which would have been imposed by this act upon such corporation had it duly applied for and received authority to transact business in this state as required by this act. In addition to the payments thus prescribed, such corporation shall be liable for a civil penalty of not less than \$500 or more than \$1,000 for each year or part thereof during which it transacts business in this state without a certificate of authority. The Department of State may collect all penalties due under this subsection and may bring an action in circuit court to recover all penalties and fees due and owing the

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state.

(5) Notwithstanding subsections (1) and (2), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of any of its contracts, deeds, mortgages, security interests, or corporate acts or prevent it from defending any proceeding in this state.

### **607.1503 Application for certificate of authority.—**

(1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Department of State for filing. Such application shall be made on forms prescribed and furnished by the Department of State and shall set forth:

- (a) The name of the foreign corporation as long as its name satisfies the requirements of s. 607.0401, but if its name does not satisfy such requirements, a corporate name that otherwise satisfies the requirements of s. 607.1506;
  - (b) The jurisdiction under the law of which it is incorporated;
  - (c) Its date of incorporation and period of duration;
  - (d) The street address of its principal office;
  - (e) The address of its registered office in this state and the name of its registered agent at that office;
  - (f) The names and usual business addresses of its current directors and officers;
  - (g) Such additional information as may be necessary or appropriate in order to enable the Department of State to determine whether such corporation is entitled to file an application for authority to transact business in this state and to determine and assess the fees and taxes payable as prescribed in this act.
- (2) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated, not more than 90 days prior to delivery of the application to the Department of State, by the secretary of state or other official having custody of corporate records in the jurisdiction under the

law of which it is incorporated. A translation of the certificate, under oath of the translator, must be attached to a certificate which is in a language other than the English language.

(3) A foreign corporation shall not be denied authority to transact business in this state by reason of the fact that the laws of the jurisdiction under which such corporation is organized governing its organization and internal affairs differ from the laws of this state.

### **607.1504 Amended certificate of authority.—**

(1) A foreign corporation authorized to transact business in this state shall make application to the Department of State to obtain an amended certificate of authority if it changes:

- (a) Its corporate name;
  - (b) The period of its duration; or
  - (c) The jurisdiction of its incorporation.
- (2) Such application shall be made within 90 days after the occurrence of any change mentioned in subsection (1), shall be made on forms prescribed by the Department of State, and shall be executed in accordance with s. 607.0120. The foreign corporation shall deliver with the completed application, a certificate, or a document of similar import, authenticated as of a date not more than 90 days prior to delivery of the application to the Department of State by the Secretary of State or other official having custody of corporate records in the jurisdiction under the laws of which it is incorporated, evidencing the amendment. A translation of the certificate, under oath or affirmation of the translator, must be attached to a certificate that is in a language other than English. The application shall set forth:
- (a) The name of the foreign corporation as it appears on the records of the Department of State.
  - (b) The jurisdiction of its incorporation.
  - (c) The date it was authorized to do business in this state.
  - (d) If the name of the foreign corporation has been changed, the name relinquished, the new name, a statement that the change of name has been effected under the laws of the jurisdiction of

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its incorporation, and the date the change was effected.

- (e) If the amendment changes its period of duration, a statement of such change.
- (f) If the amendment changes the jurisdiction of incorporation, a statement of such change.
- (3) The requirements of s. 607.1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

### **607.1505 Effect of certificate of authority.—**

- (1) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the Department of State to suspend or revoke the certificate as provided in this act.
- (2) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by this act is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.
- (3) This act does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

### **607.1506 Corporate name of foreign corporation.—**

- (1) A foreign corporation is not entitled to file an application for a certificate of authority unless the corporate name of such corporation satisfies the requirements of s. 607.0401. If the corporate name of a foreign corporation does not satisfy the requirements of s. 607.0401, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state:
  - (a) May add the word “corporation,” “company,” or “incorporated” or the abbreviation “Corp.,” “Inc.,” “Co.,” or the designation “Corp.,” “Inc.,” or “Co.,” as will clearly indicate that it is a corporation instead of a natural person, partnership, or other business entity; or

- (b) May use an alternate name to transact business in this state if its real name is unavailable. Any such alternate corporate name, adopted for use in this state, shall be cross-referenced to the real corporate name in the records of the Division of Corporations. If the corporation’s real corporate name becomes available in this state or the corporation chooses to change its alternate name, a copy of the resolution of its board of directors changing or withdrawing the alternate name, executed as required by s. 607.0120, shall be delivered for filing.

- (2) The corporate name (including the alternate name) of a foreign corporation must be distinguishable upon the records of the Division of Corporations from:

- (a) Any corporate name of a corporation incorporated or authorized to transact business in this state;
- (b) The alternate name of another foreign corporation authorized to transact business in this state;
- (c) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state; and
- (d) The names of all other entities or filings, except fictitious name registrations pursuant to s. 865.09, organized or registered under the laws of this state that are on file with the Division of Corporations.

- (3) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of s. 607.0401, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of s. 607.0401 and obtains an amended certificate of authority under s. 607.1504.

### **607.1507 Registered office and registered agent of foreign corporation.—**

- (1) Each foreign corporation authorized to transact business in this state must continuously maintain in this state:
  - (a) A registered office that may be the same as

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any of its places of business; and

(b) A registered agent, who may be:

1. An individual who resides in this state and whose business office is identical with the registered office;
2. A corporation or not-for-profit corporation as defined in chapter 617, the business office of which is identical with the registered office; or
3. Another foreign corporation or foreign not-for-profit corporation authorized pursuant to this chapter or chapter 617, to transact business or conduct its affairs in this state the business office of which is identical with the registered office.

(2) A registered agent appointed pursuant to this section or a successor registered agent appointed pursuant to s. 607.1508 on whom process may be served shall each file a statement in writing with the Department of State, in such form and manner as shall be prescribed by the department, accepting the appointment as a registered agent simultaneously with his or her being designated. Such statement of acceptance shall state that the registered agent is familiar with, and accepts, the obligations of that position.

### **607.1508 Change of registered office and registered agent of foreign corporation.—**

(1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Department of State for filing a statement of change that sets forth:

- (a) Its name;
- (b) The street address of its current registered office;
- (c) If the current registered office is to be changed, the street address of its new registered office;
- (d) The name of its current registered agent;
- (e) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment;
- (f) That, after the change or changes are made, the street address of its registered office and the

business office of its registered agent will be identical; and

(g) That such change was authorized by resolution duly adopted by its board of directors or by an officer of the corporation so authorized by the board of directors.

(2) If a registered agent changes the street address of her or his business office, she or he may change the street address of the registered office of any foreign corporation for which she or he is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Department of State for filing a statement of change that complies with the requirements of paragraphs (1)(a)-(f) and recites that the corporation has been notified of the change.

### **607.1509 Resignation of registered agent of foreign corporation.—**

(1) The registered agent of a foreign corporation may resign his or her agency appointment by signing and delivering to the Department of State for filing a statement of resignation and mailing a copy of such statement to the corporation at the corporation's principal office address shown in its most recent annual report or, if none, shown in its application for a certificate of authority or other most recently filed document. The statement of resignation must state that a copy of such statement has been mailed to the corporation at the address so stated. The statement of resignation may include a statement that the registered office is also discontinued.

(2) The agency appointment is terminated as of the 31st day after the date on which the statement was filed and, unless otherwise provided in the statement, termination of the agency acts as a termination of the registered office.

### **607.15101 Service of process, notice, or demand on a foreign corporation.—**

(1) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice,

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or demand required or permitted by law to be served on the foreign corporation.

(2) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation:

(a) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(b) Has withdrawn from transacting business in this state under s. 607.1520; or

(c) Has had its certificate of authority revoked under s. 607.1531.

(3) Service is perfected under subsection (2) at the earliest of:

(a) The date the foreign corporation receives the mail;

(b) The date shown on the return receipt, if signed on behalf of the foreign corporation; or

(c) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(4) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation. Process against any foreign corporation may also be served in accordance with chapter 48 or chapter 49.

(5) Any notice to or demand on a foreign corporation made pursuant to this act may be made in accordance with the procedures for notice to or demand on domestic corporations under s. 607.0504.

### **607.1520 Withdrawal of foreign corporation.—**

(1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Department of State.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Department of State for filing. The application

shall be made on forms prescribed and furnished by the Department of State and shall set forth:

(a) The name of the foreign corporation and the jurisdiction under the law of which it is incorporated;

(b) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) That it revokes the authority of its registered agent to accept service on its behalf and appoints the Department of State as its agent for service of process based on a cause of action arising during the time it was authorized to transact business in this state;

(d) A mailing address to which the Department of State may mail a copy of any process served on it under paragraph (c); and

(e) A commitment to notify the Department of State in the future of any change in its mailing address.

(3) After the withdrawal of the corporation is effective, service of process on the Department of State under this section is service on the foreign corporation. Upon receipt of the process, the Department of State shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (2).

**607.1530 Grounds for revocation of authority to transact business.—**The Department of State may commence a proceeding under s. 607.1531 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation has failed to file its annual report with the Department of State by 5 p.m. Eastern Time on the third Friday in September.

(2) The foreign corporation does not pay, within the time required by this act, any fees, taxes, or penalties imposed by this act or other law.

(3) The foreign corporation is without a registered agent or registered office in this state for 30 days or more.

(4) The foreign corporation does not notify the

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Department of State under s. 607.1508 or s. 607.1509 that its registered agent has resigned or that its registered office has been discontinued within 30 days of the resignation or discontinuance.

(5) An incorporator, director, officer, or agent of the foreign corporation signed a document she or he knew was false in any material respect with intent that the document be delivered to the Department of State for filing.

(6) The Department of State receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the jurisdiction under the law of which the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

(7) The foreign corporation has failed to answer truthfully and fully, within the time prescribed by this act, interrogatories propounded by the Department of State.

### **607.1531 Procedure for and effect of revocation.—**

(1) If the Department of State determines that one or more grounds exist under s. 607.1530 for revocation of a certificate of authority, the Department of State shall serve the foreign corporation with notice of its intent to revoke the foreign corporation's certificate of authority. If the foreign corporation has provided the department with an electronic mail address, such notice shall be by electronic transmission. Revocation for failure to file an annual report shall occur on the fourth Friday in September of each year. The department shall issue a certificate of revocation to each revoked corporation. Issuance of the certificate of revocation may be by electronic transmission to any corporation that has provided the department with an electronic mail address.

(2) If the foreign corporation does not correct each ground for revocation under s. 607.1530(2)-(7) or demonstrate to the reasonable satisfaction of the Department of State that each ground determined by the Department of State does not

exist within 60 days after issuance of notice, the Department of State shall revoke the foreign corporation's certificate of authority by issuing a certificate of revocation that recites the ground or grounds for revocation and its effective date. Issuance of the certificate of revocation may be by electronic transmission to any foreign corporation that has provided the department with an electronic mail address.

(3) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.  
**607.15315 Revocation; application for reinstatement.—**

(1)(a) A foreign corporation the certificate of authority of which has been revoked pursuant to s. 607.1531 may apply to the Department of State for reinstatement at any time after the effective date of revocation of authority. The application must:

1. Recite the name of the foreign corporation and the effective date of its revocation of authority;
2. State that the ground or grounds for revocation of authority either did not exist or have been eliminated and that no further grounds currently exist for revocation of authority;
3. State that the foreign corporation's name satisfies the requirements of s. 607.1506; and
4. State that all fees owed by the corporation and computed at the rate provided by law at the time the foreign corporation applies for reinstatement have been paid; or

(b) As an alternative, the foreign corporation may submit a current annual report, signed by the registered agent and an officer or director, which substantially complies with the requirements of paragraph (a).

(2) If the Department of State determines that the application contains the information required by subsection (1) and that the information is correct, it shall cancel the certificate of revocation of authority and prepare a certificate of

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reinstatement that recites its determination and prepare a certificate of reinstatement, file the original of the certificate, and serve a copy on the corporation under s. 607.0504(2).

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the revocation of authority and the foreign corporation resumes carrying on its business as if the revocation of authority had never occurred.

(4) The name of the foreign corporation the certificate of authority of which has been revoked is not available for assumption or use by another corporation until 1 year after the effective date of revocation of authority unless the corporation provides the Department of State with an affidavit executed as required by s. 607.0120 permitting the immediate assumption or use of the name by another corporation.

(5) If the name of the foreign corporation has been lawfully assumed in this state by another corporation, the Department of State shall require the foreign corporation to comply with s. 607.1506 before accepting its application for reinstatement.

### **607.1532 Appeal from revocation.—**

(1) If the Department of State revokes the authority of any foreign corporation to transact business in this state pursuant to the provisions of this act, such foreign corporation may likewise appeal to the circuit court of the county where the registered office of such corporation in this state is situated by filing with the clerk of such court a petition setting forth a copy of its application for authority to transact business in this state and a copy of the certificate of revocation given by the Department of State, whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Department of State or direct the department to take such action as the court deems proper.

(2) Appeals from all final orders and judgments entered by the circuit court under this section in review of any ruling or decision of the Department of State may be taken as in other civil actions.

*Florida Department of State*

*Division of Corporations*

*850-245-6052*

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