Business Associations

Statutes and Rules

2019 Edition

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# Restatement of the Law (Third) Agency

**Chapter One: Introductory Matters**

**Section 1.01—Agency Defined**

Agency is the fiduciary relationship that arises when one person (a ‘‘principal’’) manifests assent to another person (an ‘‘agent’’) that the agent shall act on the principal’s behalf and subject to the principal’s control, and the agent manifests assent or otherwise consents so to act.

**Section 1.02—Parties’ Labeling and Popular Usage Not Controlling**

An agency relationship arises only when the elements stated in § 1.01 are present. Whether a relationship is characterized as agency in an agreement between parties or in the context of industry or popular usage is not controlling.

**Section 1.03—Manifestation**

A person manifests assent or intention through written or spoken words or other conduct.

**Section 1.04—Terminology**

**(1)** Coagents. Coagents have agency relationships with the same principal. A coagent may be appointed by the principal or by another agent actually or apparently authorized by the principal to do so.

**(2)** Disclosed, undisclosed, and unidentified principals.

**(a)** Disclosed principal. A principal is disclosed if, when an agent and a third party interact, the third party has notice that the agent is acting for a principal and has notice of the principal's identity.

**(b)** Undisclosed principal. A principal is undisclosed if, when an agent and a third party interact, the third party has no notice that the agent is acting for a principal.

**(c)** Unidentified principal. A principal is unidentified if, when an agent and a third party interact, the third party has notice that the agent is acting for a principal but does not have notice of the principal's identity.

**(3)** Gratuitous agent. A gratuitous agent acts without a right to compensation.

**(4)** Notice. A person has notice of a fact if the person knows the fact, has reason to know the fact, has received an effective notification of the fact, or should know the fact to fulfill a duty owed to another person. Notice of a fact that an agent knows or has reason to know is imputed to the principal as stated in §§ 5.03 and 5.04. A notification given to or by an agent is effective as notice to or by the principal as stated in § 5.02.

**(5)** Person. A person is

**(a)** an individual;

**(b)** an organization or association that has legal capacity to possess rights and incur obligations;

**(c)** a government, political subdivision, or instrumentality or entity created by government; or

**(d)** any other entity that has legal capacity to possess rights and incur obligations.

**(6)** Power given as security. A power given as security is a power to affect the legal relations of its creator that is created in the form of a manifestation of actual authority and held for the benefit of the holder or a third person. It is given to protect a legal or equitable title or to secure the performance of a duty apart from any duties owed the holder of the power by its creator that are incident to a relationship of agency under § 1.01.

**(7)** Power of attorney. A power of attorney is an instrument that states an agent's authority.

**(8)** Subagent. A subagent is a person appointed by an agent to perform functions that the agent has consented to perform on behalf of the agent's principal and for whose conduct the appointing agent is responsible to the principal. The relationship between an appointing agent and a subagent is one of agency, created as stated in § 1.01.

**(9)** Superior and subordinate coagents. A superior coagent has the right, conferred by the principal, to direct a subordinate coagent.

**(10)** Trustee and agent-trustee. A trustee is a holder of property who is subject to fiduciary duties to deal with the property for the benefit of charity or for one or more persons, at least one of whom is not the sole trustee. An agent-trustee is a trustee subject to the control of the settlor or of one or more beneficiaries.

**Chapter Two:** **Principles of Attribution**

**Section 2.01—Actual Authority**

An agent acts with actual authority when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal’s manifestations to the agent that the principal wishes the agent so to act.

**Section 2.02—Scope of Actual Authority**

**(1)** An agent has actual authority to take action designated or implied in the principal’s manifestations to the agent and acts necessary or incidental to achieving the principal’s objectives, as the agent reasonably understands the principal’s manifestations and objectives when the agent determines how to act.

**(2)** An agent’s interpretation of the principal’s manifestations is reasonable if it reflects any meaning known by the agent to be ascribed by the principal and, in the absence of any meaning known to the agent, as a reasonable person in the agent’s position would interpret the manifestations in light of the context, including circumstances of which the agent has notice and the agent’s fiduciary duty to the principal.

**(3)** An agent’s understanding of the principal’s objectives is reasonable if it accords with the principal’s manifestations and the inferences that a reasonable person in the agent’s position would draw from the circumstances creating the agency.

**Section 2.03—Apparent Authority**

Apparent authority is the power held by an agent or other actor to affect a principal’s legal relations with third parties when a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal’s manifestations.

**Section 2.04—Respondeat Superior**

An employer is subject to liability for torts committed by employees while acting within the scope of their employment.

**Chapter Six: Contracts and Other Transactions with Third Parties**

**Section 6.01—Agent for Disclosed Principal**

When an agent acting with actual or apparent authority makes a contract on behalf of a disclosed principal,

**(1)** the principal and the third party are parties to the contract; and

**(2)** the agent is not a party to the contract unless the agent and third party agree otherwise.

**Section 6.02—Agent for Unidentified Principal**

When an agent acting with actual or apparent authority makes a contract on behalf of an unidentified principal,

**(1)** the principal and the third party are parties to the contract; and

**(2)** the agent is a party to the contract unless the agent and the third party agree otherwise.

**Section 6.03—Agent for Undisclosed Principal**

When an agent acting with actual authority makes a contract on behalf of an undisclosed principal,

**(1)** unless excluded by the contract, the principal is a party to the contract;

**(2)** the agent and the third party are parties to the contract; and

**(3)** the principal, if a party to the contract, and the third party have the same rights, liabilities, and defenses against each other as if the principal made the contract personally, subject to §§ 6.05–6.09.

**Chapter Seven: Torts—Liability of Agent and Principal**

**Section 7.01—Agent’s Liability to Third Party**

An agent is subject to liability to a third party harmed by the agent’s tortious conduct. Unless an applicable statute provides otherwise, an actor remains subject to liability although the actor acts as an agent or an employee, with actual or apparent authority, or within the scope of employment.

**Section 7.03—Principal’s Liability—In General**

**(1)** A principal is subject to direct liability to a third party harmed by an agent's conduct when

**(a)** as stated in § 7.04, the agent acts with actual authority or the principal ratifies the agent's conduct and

**(i)** the agent's conduct is tortious, or

**(ii)** the agent's conduct, if that of the principal, would subject the principal to tort liability; or

**(b)** as stated in § 7.05, the principal is negligent in selecting, supervising, or otherwise controlling the agent; or

**(c)** as stated in § 7.06, the principal delegates performance of a duty to use care to protect other persons or their property to an agent who fails to perform the duty.

**(2)** A principal is subject to vicarious liability to a third party harmed by an agent's conduct when

**(a)** as stated in § 7.07, the agent is an employee who commits a tort while acting within the scope of employment; or

**(b)** as stated in § 7.08, the agent commits a tort when acting with apparent authority in dealing with a third party on or purportedly on behalf of the principal.

**Section 7.07—Employee Acting Within Scope of Employment**

**(1)** An employer is subject to vicarious liability for a tort committed by its employee acting within the scope of employment.

**(2)** An employee acts within the scope of employment when performing work assigned by the employer or engaging in a course of conduct subject to the employer’s control. An employee’s act is not within the scope of employment when it occurs within an independent course of conduct not intended by the employee to serve any purpose of the employer.

**(3)** For purposes of this section,

**(a)** an employee is an agent whose principal controls or has the right to control the manner and means of the agent’s performance of work, and

**(b)** the fact that work is performed gratuitously does not relieve a principal of liability.

**Chapter Eight: Duties of Agent and Principal to Each Other**

**Section 8.01—General Fiduciary Principle**

An agent has a fiduciary duty to act loyally for the principal’s benefit in all matters connected with the agency relationship.

**Section 8.02—Material Benefit Arising Out of Position**

An agent has a duty not to acquire a material benefit from a third party in connection with transactions conducted or other actions taken on behalf of the principal or otherwise through the agent’s use of the agent’s position.

**Section 8.03—Acting as or on Behalf of an Adverse Party**

An agent has a duty not to deal with the principal as or on behalf of an adverse party in a transaction connected with the agency relationship.

**Section 8.04—Competition**

Throughout the duration of an agency relationship, an agent has a duty to refrain from competing with the principal and from taking action on behalf of or otherwise assisting the principal’s competitors. During that time, an agent may take action, not otherwise wrongful, to prepare for competition following termination of the agency relationship.

**Section 8.05—Use of Principal’s Property, Use of Confidential Information**

An agent has a duty

**(1)** not to use property of the principal for the agent’s own purposes or those of a third party; and

**(2)** not to use or communicate confidential information of the principal for the agent’s own purposes or those of a third party.

**Section 8.06—Principal’s Consent**

**(1)** Conduct by an agent that would otherwise constitute a breach of duty as stated in §§ 8.01, 8.02, 8.03, 8.04, and 8.05 does not constitute a breach of duty if the principal consents to the conduct, provided that

**(a)** in obtaining the principal’s consent, the agent

**(i)** acts in good faith,

**(ii)** discloses all material facts that the agent knows, has reason to know, or should know would reasonably affect the principal’s judgment unless the principal has manifested that such facts are already known by the principal or that the principal does not wish to know them, and

**(iii)** otherwise deals fairly with the principal; and

**(b)** the principal’s consent concerns either a specific act or transaction, or acts or transactions of a specified type that could reasonably be expected to occur in the ordinary course of the agency relationship.

**(2)** An agent who acts for more than one principal in a transaction between or among them has a duty

**(a)** to deal in good faith with each principal,

**(b)** to disclose to each principal

**(i)** the fact that the agent acts for the other principal or principals, and

**(ii)** all other facts that the agent knows, has reason to know, or should know would reasonably affect the principal’s judgment unless the principal has manifested that such facts are already known by the principal or that the principal does not wish to know them, and

**(c)** otherwise to deal fairly with each principal.

**Section 8.07—Duty Created by Contract**

An agent has a duty to act in accordance with the express and implied terms of any contract between the agent and the principal.

**Section 8.08—Duties of Care, Competence, and Diligence**

Subject to any agreement with the principal, an agent has a duty to the principal to act with the care, competence, and diligence normally exercised by agents in similar circumstances. Special skills or knowledge possessed by an agent are circumstances to be taken into account in determining whether the agent acted with due care and diligence. If an agent claims to possess special skills or knowledge, the agent has a duty to the principal to act with the care, competence, and diligence normally exercised by agents with such skills or knowledge.

**Section 8.09—Duty to Act Only Within Scope of Actual Authority and to Comply with Principal’s Lawful Instructions**

(1) An agent has a duty to take action only within the scope of the agent's actual authority.

(2) An agent has a duty to comply with all lawful instructions received from the principal and persons designated by the principal concerning the agent's actions on behalf of the principal.

**Section 8.11—Duty to Provide Information**

An agent has a duty to use reasonable effort to provide the principal with facts that the agent knows, has reason to know, or should know when

(1) subject to any manifestation by the principal, the agent knows or has reason to know that the principal would wish to have the facts or the facts are material to the agent's duties to the principal; and

(2) the facts can be provided to the principal without violating a superior duty owed by the agent to another person.

**Section 8.14—Duty to Indemnify**

A principal has a duty to indemnify an agent

(1) in accordance with the terms of any contract between them; and

(2) unless otherwise agreed,

(a) when the agent makes a payment

(i) within the scope of the agent's actual authority, or

(ii) that is beneficial to the principal, unless the agent acts officiously in making the payment; or

(b) when the agent suffers a loss that fairly should be borne by the principal in light of their relationship.

**Section 8.15—Principal’s Duty to Deal Fairly and in Good Faith**

A principal has a duty to deal with the agent fairly and in good faith, including a duty to provide the agent with information about risks of physical harm or pecuniary loss that the principal knows, has reason to know, or should know are present in the agent's work but unknown to the agent.

# Restatement of the Law (Second) Agency

**Section 220—Definition of Servant**

**(1)** A servant is a person employed to perform services in the affairs of another and who with respect to the physical conduct in the performance of the services is subject to the other's control or right to control.

**(2)** In determining whether one acting for another is a servant or an independent contractor, the following matters of fact, among others, are considered:

**(a)** the extent of control which, by the agreement, the master may exercise over the details of the work;

**(b)** whether or not the one employed is engaged in a distinct occupation or business;

**(c)** the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;

**(d)** the skill required in the particular occupation;

**(e)** whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;

**(f)** the length of time for which the person is employed;

**(g)** the method of payment, whether by the time or by the job;

**(h)** whether or not the work is a part of the regular business of the employer;

**(i)** whether or not the parties believe they are creating the relation of master and servant; and

**(j)** whether the principal is or is not in business.

# Revised Uniform Partnership Act (RUPA)

**(with 2013 changes)**

**Section 102––Definitions.**

In this [act]:

**(1)** “Business” includes every trade, occupation, and profession.

**(2)** “Contribution”, except in the phrase “right of contribution”, means property or a benefit described in Section 403 which is provided by a person to a partnership to become a partner or in the person’s capacity as a partner.

**(3)** “Debtor in bankruptcy” means a person that is the subject of:

**(A)** an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

**(B)** a comparable order under federal, state, or foreign law governing insolvency.

**(4)** “Distribution” means a transfer of money or other property from a partnership to a

person on account of a transferable interest or in a person’s capacity as a partner. The term:

**(A)** includes:

**(i)** a redemption or other purchase by a partnership of a transferable interest; and

**(ii)** a transfer to a partner in return for the partner’s relinquishment of any right to participate as a partner in the management or conduct of the partnership’s business or have access to records or other information concerning the partnership’s business; and

**(B)** does not include amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program.

**(5)** “Foreign limited liability partnership” means a foreign partnership whose partners have limited liability for the debts, obligations, or other liabilities of the foreign partnership under a provision similar to Section 306(c).

**(6)** “Foreign partnership” means an unincorporated entity formed under the law of a

jurisdiction other than this state which would be a partnership if formed under the law of this state. The term includes a foreign limited liability partnership.

**(7)** “Jurisdiction”, used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

**(8)** “Jurisdiction of formation” means the jurisdiction whose law governs the internal affairs of an entity.

**(9)** “Limited liability partnership”, except in the phrase “foreign limited liability partnership” and in [Article] 11, means a partnership that has filed a statement of qualification under Section 901 and does not have a similar statement in effect in any other jurisdiction.

**(10)** “Partner” means a person that:

**(A)** has become a partner in a partnership under Section 402 or was a partner in a partnership when the partnership became subject to this [act] under Section 110; and

**(B)** has not dissociated as a partner under Section 601.

**(11)** “Partnership”, except in [Article] 11, means an association of two or more persons to carry on as co-owners a business for profit formed under this [act] or that becomes subject to this [act] under [Article] 11 or Section 110. The term includes a limited liability partnership.

**(12)** “Partnership agreement” means the agreement, whether or not referred to as a partnership agreement and whether oral, implied, in a record, or in any combination thereof, of all the partners of a partnership concerning the matters described in Section 105(a). The term includes the agreement as amended or restated.

**(13)** “Partnership at will” means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

**(14)** “Person” means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, [general cooperative association,] limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

**(15)** “Principal office” means the principal executive office of a partnership or a foreign limited liability partnership, whether or not the office is located in this state.

**(16)** “Property” means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.

**(17)** “Record”, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**(18)** “Registered agent” means an agent of a limited liability partnership or foreign limited liability partnership which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the partnership.

**(19)** “Registered foreign limited liability partnership” means a foreign limited liability partnership that is registered to do business in this state pursuant to a statement of registration filed by the [Secretary of State].

**(20)** “Sign” means, with present intent to authenticate or adopt a record:

**(A)** to execute or adopt a tangible symbol; or

**(B)** to attach to or logically associate with the record an electronic symbol, sound, or process.

**(21)** “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

**(22)** “Transfer” includes:

**(A)** an assignment;

**(B)** a conveyance;

**(C)** a sale;

**(D)** a lease;

**(E)** an encumbrance, including a mortgage or security interest;

**(F)** a gift; and

**(G)** a transfer by operation of law.

**(23)** “Transferable interest” means the right, as initially owned by a person in the person’s capacity as a partner, to receive distributions from a partnership, whether or not the person remains a partner or continues to own any part of the right. The term applies to any fraction of the interest, by whomever owned.

**(24)** “Transferee” means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner

**Section 104—Governing Law**

The internal affairs of a partnership and the liability of a partner as a partner for a debt, obligation, or other liability of the partnership are governed by:

**(1)** in the case of a limited liability partnership, the law of this state; and

**(2)** in the case of a partnership that is not a limited liability partnership, the law of the jurisdiction in which the partnership has its principal office.

**Section 105—Partnership Agreement; Scope, Function, and Limitations.**

**(a)** Except as otherwise provided in subsections (c) and (d), the partnership agreement governs

 **(1)** relations among the partners as partners and between the partners and the partnership;

 **(2)** the business of the partnership and the conduct of that business; and

 **(3)** the means and conditions for amending the partnership agreement.

**(b)** To the extent the partnership agreement does not provide for a matter described in subsection (a), this act governs the matter.

**(c)** A partnership agreement may not:

**(1)** vary the law applicable under Section 104(1);

**(2)** vary the provisions of Section 110;

**(3)** vary the provisions of Section 307;

**(4)** unreasonably restrict the duties and rights under Section 408, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under that section and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

**(5)** alter or eliminate the duty of loyalty or the duty of care, except as otherwise provided in subsection (d);

**(6)** eliminate the contractual obligation of good faith and fair dealing under Section 409(d), but the partnership agreement may prescribe the standards, if not manifestly unreasonable, by which the performance of the obligation is to be measured;

**(7)** unreasonably restrict the right of a person to maintain an action under Section

410(b);

**(8)** relieve or exonerate a person from liability for conduct involving bad faith, willful or intentional misconduct, or knowing violation of law;

**(9)** vary the power of a person to dissociate as a partner under Section 602(a), except to require that the notice under Section 601(1) to be in a record;

**(10)** vary the grounds for expulsion specified in Section 601(5);

**(11)** vary the causes of dissolution specified in Section 801(4) or (5);

**(12)** vary the requirement to wind up the partnership’s business as specified in Section 802(a), (b)(1), and (d);

**(13)** vary the right of a partner under Section 901(f) to vote on or consent to a cancellation of a statement of qualification;

**(14)** vary the right of a partner to approve a merger, interest exchange, conversion, or domestication under Section 1123(a)(2), 1133(a)(2), 1143(a)(2), or 1153(a)(2);

**(15)** vary the required contents of a plan of merger under Section 1122(a), plan of interest exchange under Section 1132(a), plan of conversion under Section 1142(a), or plan of domestication under Section 1152(a);

**(16)** vary any requirement, procedure, or other provision of this [act] pertaining to:

**(A)** registered agents; or

**(B)** the [Secretary of State], including provisions pertaining to records authorized or required to be delivered to the [Secretary of State] for filing under this [act]; or

**(17)** except as otherwise provided in Sections 106 and 107(b), restrict the rights under this act of a person other than a partner.

**(d)** Subject to subsection (c)(8), without limiting other terms that may be included in a partnership agreement, the following rules apply:

 **(1)** the partnership agreement may:

**(A)** specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts; and

**(B)** alter the prohibition in Section 406(a)(2) so that the prohibition requires only that the partnership’s total assets not be less than the sum of its liabilities.

**(2)** to the extent that the partnership agreement expressly relieves a partner of a responsibility that the partner would otherwise have under this act and imposes the responsibility on one or more other partners, the agreement also may eliminate or limit any fiduciary duty of the partner relieved of the responsibility which would have pertained to the responsibility.

**(3)** If not manifestly unreasonable, the partnership agreement may:

**(A)** alter or eliminate the aspects of the duty of loyalty stated in Section 409(b);

**(B)** identify specific types or categories of activities that do not violated the duty of loyalty.

**(C)** alter the duty of care, but may not authorize conduct involving bad faith, willful or intentional misconduct, or knowing violation of law.

**(D)** alter or eliminate any other fiduciary duty.

**(e)** The court shall decide as a matter of law whether a term of a partnership agreement is

manifestly unreasonable under subsection (c)(6) or (d)(3). The court:

**(1)** shall make its determination as of the time the challenged term became part of the partnership agreement and by considering only circumstances existing at that time; and

**(2)** may invalidate the term only if, in light of the purposes and business of the partnership, it is readily apparent that:

**(A)** the objective of the term is unreasonable; or

**(B)** the term is an unreasonable means to achieve the term’s objective.

**Section 202—Formation of Partnership**

**(a)** Except as otherwise provided in subsection (b), the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

**(b)** An association formed under a statute other than this [act], a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this [act].

**(c)** In determining whether a partnership is formed, the following rules apply:

**(1)** Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co- owners share profits made by the use of the property.

**(2)** The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

**(3)** A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

**(A)** of a debt by installments or otherwise;

**(B)** for services as an independent contractor or of wages or other compensation to an employee;

**(C)** of rent;

**(D)** of an annuity or other retirement or health benefit to a deceased or retired partner or a beneficiary, representative, or designee of a deceased or retired partner;

**(E)** of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or

**(F)** for the sale of the goodwill of a business or other property by installments or otherwise.

**Section 301—Partner as Agent of Partners****hips**

Subject to the effect of a statement of partnership authority under Section 303, the following rules apply:

**(1)** Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the signing of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner did not have authority to act for the partnership in the particular matter and the person with which the partner was dealing knew or had notice that the partner lacked authority.

**(2)** An act of a partner which is not apparently for carrying on in the ordinary course the partnership’s business or business of the kind carried on by the partnership binds the partnership only if the act was actually authorized by all the other partners.

**Section 302—Transfer of Partnership Property**

**(a)** Partnership property may be transferred as follows:

**(1)** Subject to the effect of a statement of partnership authority under Section 303, partnership property held in the name of the partnership may be transferred by an instrument of transfer signed by a partner in the partnership name.

**(2)** Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer signed by the persons in whose name the property is held.

**(3)** Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer signed by the persons in whose name the property is held.

**(b)** A partnership may recover partnership property from a transferee only if it proves that signing of the instrument of initial transfer did not bind the partnership under Section 301 and:

**(1)** as to a subsequent transferee who gave value for property transferred under subsection (a)(1) and (2), proves that the subsequent transferee knew or had been notified that the person who signed the instrument of initial transfer lacked authority to bind the partnership; or

**(2)** as to a transferee who gave value for property transferred under subsection (a)(3), proves that the transferee knew or had been notified that the property was partnership property and that the person who signed the instrument of initial transfer lacked authority to bind the partnership.

**(c)** A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection (b), from any earlier transferee of the property.

**(d)** If a person holds all the partners’ interests in the partnership, all the partnership property vests in that person. The person may sign a record in the name of the partnership to evidence vesting of the property in that person and may file or record the record.

**Section 303—Statement of Partnership Authority**

**(a)** A partnership may deliver to the [Secretary of State] for filing a statement of partnership authority. The statement:

**(1)** must include the name of the partnership and:

**(A)** if the partnership is not a limited liability partnership, the street and mailing addresses of its principal office; or

**(B)** if the partnership is a limited liability partnership, the name and street and mailing addresses of its registered agent;

**(2)** with respect to any position that exists in or with respect to the partnership, may state the authority, or limitations on the authority, of all persons holding the position to:

**(A)** sign an instrument transferring real property held in the name of the partnership; or

**(B)** enter into other transactions on behalf of, or otherwise act for or bind, the partnership; and

**(3)** may state the authority, or limitations on the authority, of a specific person to:

**(A)** sign an instrument transferring real property held in the name of the partnership; or

**(B)** enter into other transactions on behalf of, or otherwise act for or bind, the partnership.

**(b)** To amend or cancel a statement of authority filed by the [Secretary of State], a partnership must deliver to the [Secretary of State] for filing an amendment or cancellation stating:

**(1)** the name of the partnership;

**(2)** if the partnership is not a limited liability partnership, the street and mailing addresses of the partnership’s principal office;

**(3)** if the partnership is a limited liability partnership, the name and street and mailing addresses of its registered agent;

**(4)** the date the statement being affected became effective; and

**(5)** the contents of the amendment or a declaration that the statement is canceled.

**(c)** A statement of authority affects only the power of a person to bind a partnership to persons that are not partners.

**(d)** Subject to subsection (c) and Section 103(d)(1), and except as otherwise provided in subsections (f), (g), and (h), a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of any person’s knowledge or notice of the limitation.

**(e)** Subject to subsection (c), a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that if the person gives value:

**(1)** the person has knowledge to the contrary;

**(2)** the statement has been canceled or restrictively amended under subsection (b); or

**(3)** a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

**(f)** Subject to subsection (c), an effective statement of authority that grants authority to transfer real property held in the name of the partnership, a certified copy of which statement is recorded in the office for recording transfers of the real property, is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

**(1)** the statement has been canceled or restrictively amended under subsection (b), and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property; or

**(2)** a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective, and a certified copy of the later-effective statement is recorded in the office for recording transfers of the real property.

**(g)** Subject to subsection (c), if a certified copy of an effective statement containing a limitation on the authority to transfer real property held in the name of a partnership is recorded in the office for recording transfers of that real property, all persons are deemed to know of the limitation.

**(h)** Subject to subsection (i), an effective statement of dissolution is a cancellation of any filed statement of authority for the purposes of subsection (f) and is a limitation on authority for purposes of subsection (g).

**(i)** After a statement of dissolution becomes effective, a partnership may deliver to the [Secretary of State] for filing and, if appropriate, may record a statement of authority that is designated as a post-dissolution statement of authority. The statement operates as provided in subsections (f) and (g).

**(j)** Unless canceled earlier, an effective statement of authority is canceled by operation of law five years after the date on which the statement, or its most recent amendment, becomes effective. The cancellation is effective without recording under subsection (f) or (g).

**(k)** An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for purposes of subsection (f)(1)

**Section 305—Partnership liable for partner’s actionable conduct**

**(a)** A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with the actual or apparent authority of the partnership.

**(b)** If, in the course of the partnership’s business or while acting with actual or apparent authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

**Section 306—Partner’s Liability**

**(a)** Except as otherwise provided in subsections (b) and (c), all partners are liable jointly and severally for all debts, obligations, and other liabilities of the partnership unless otherwise agreed by the claimant or provided by law.

**(b)** A person that becomes a partner is not personally liable for a debt, obligation, or other liability of the partnership incurred before the person became a partner.

**(c)** A debt, obligation, or other liability of a partnership incurred while the partnership is a limited liability partnership is solely the debt, obligation, or other liability of the limited liability partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the limited liability partnership solely by reason of being or acting as a partner. This subsection applies:

**(1)** despite anything inconsistent in the partnership agreement that existed immediately before the vote or consent required to become a limited liability partnership under Section 901(b); and

**(2)** regardless of the dissolution of the limited liability partnership.

**(d)** The failure of a limited liability partnership to observe formalities relating to the

exercise of its powers or management of its business is not a ground for imposing liability on a partner for a debt, obligation, or other liability of the partnership.

**(e)** The cancellation or administrative revocation of a limited liability partnership’s statement of qualification does not affect the limitation in this section on the liability of a partner for a debt, obligation, or other liability of the partnership incurred while the statement was in effect.

**Section 307—Actions by and Against Partnership and Partners**

**(a)** A partnership may sue and be sued in the name of the partnership.

**(b)** To the extent not inconsistent with Section 306, a partner may be joined in an action against the partnership or named in a separate action.

**(c)** A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner’s assets unless there is also a judgment against the partner.

**(d)** A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under Section 306 and:

**(1)** a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

**(2)** the partnership is a debtor in bankruptcy;

**(3)** the partner has agreed that the creditor need not exhaust partnership assets;

**(4)** a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court’s equitable powers; or

**(5)** liability is imposed on the partner by law or contract independent of the existence of the partnership.

**(e)** This section applies to any debt, liability, or other obligation of a partnership which results from a representation by a partner or purported partner under Section 308.

**Section 401—Partner’s rights and duties.**

**(a)** Each partner is entitled to an equal share of the partnership distributions and, except in the case of a limited liability partnership, is chargeable with a share of the partnership losses in proportion to the partner’s share of the distributions.

**(b)** A partnership shall reimburse a partner for any payment made by the partner in the

course of the partner’s activities on behalf of the partnership, if the partner complied with this section and Section 409 in making the payment.

**(c)** A partnership shall indemnify and hold harmless a person with respect to any claim or

demand against the person and any debt, obligation, or other liability incurred by the person by reason of the person’s former or present capacity as a partner, if the claim, demand, debt, obligation, or other liability does not arise from the person’s breach of this section or Section 407 or 409.

**(d)** In the ordinary course of its business, a partnership may advance reasonable expenses, including attorney’s fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person’s former or present capacity as a partner, if the person promises to repay the partnership if the person ultimately is determined not to be entitled to be indemnified under subsection (c).

**(e)** A partnership may purchase and maintain insurance on behalf of a partner against liability asserted against or incurred by the partner in that capacity or arising from that status even if, under Section 105(c)(7), the partnership agreement could not eliminate or limit the person’s liability to the partnership for the conduct giving rise to the liability.

**(f)** A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

**(g)** A payment or advance made by a partner which gives rise to a partnership obligation under subsection (b) or (f) constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

**(h)** Each partner has equal rights in the management and conduct of the partnership’s business.

**(i)** A partner may use or possess partnership property only on behalf of the partnership.

**(j)** A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

**(k)** A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the affirmative vote or consent of all the partners.

**Section 402—Becoming Partner**

**(a)** Upon formation of a partnership, a person becomes a partner under Section 202(a).

**(b)** After formation of a partnership, a person becomes a partner:

**(1)** as provided in the partnership agreement;

**(2)** as a result of a transaction effective under [Article] 11; or (3) with the affirmative vote or consent of all the partners.

**(c)** A person may become a partner without:

**(1)** acquiring a transferable interest; or

**(2)** making or being obligated to make a contribution to the partnership.

**Section 403—Form of Contribution**

A contribution may consist of property transferred to, services performed for, or another benefit provided to the partnership or an agreement to transfer property to, perform services for, or provide another benefit to the partnership.

**Section 405—Sharing of and Right to Distributions before Dissolution**

**(a)** Any distribution made by a partnership before its dissolution and winding up must be in equal shares among partners, except to the extent necessary to comply with a transfer effective under Section 503 or charging order in effect under Section 504.

**(b)** Subject to Section 701, a person has a right to a distribution before the dissolution and winding up of a partnership only if the partnership decides to make an interim distribution.

**(c)** A person does not have a right to demand or receive a distribution from a partnership in any form other than money. Except as otherwise provided in Section 806, a partnership may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person’s share of distributions.

**(d)** If a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the partnership with respect to the distribution. However, the partnership’s obligation to make a distribution is subject to offset for any amount owed to the partnership by the partner or a person dissociated as partner on whose account the distribution is made.

**Section 409—Standards of Conduct for Partners**

**(a)** A partner owes to the partnership and the other partners the duties of loyalty and care stated in subsections (b) and (c).

**(b)** The fiduciary duty of loyalty of a partner includes the duties:

**(1)** to account to the partnership and hold as trustee for it any property, profit, or

benefit derived by the partner:

**(A)** in the conduct or winding up of the partnership’s business;

**(B)** from a use by the partner of the partnership’s property; or

**(C)** from the appropriation of a partnership opportunity;

**(2)** to refrain from dealing with the partnership in the conduct or winding up of

the partnership business as or on behalf of a person having an interest adverse to the partnership; and

**(3)** to refrain from competing with the partnership in the conduct of the partnership’s business before the dissolution of the partnership.

**(c)** The duty of care of a partner in the conduct or winding up of the partnership business is to refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, or a knowing violation of law.

**(d)** A partner shall discharge the duties and obligations under this [act] or under the partnership agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

**(e)** A partner does not violate a duty or obligation under this [act] or under the partnership agreement solely because the partner’s conduct furthers the partner’s own interest.

**(f)** All the partners may authorize or ratify, after full disclosure of all material facts, a specific act or transaction by a partner that otherwise would violate the duty of loyalty.

**(g)** It is a defense to a claim under subsection (b)(2) and any comparable claim in equity or at common law that the transaction was fair to the partnership.

**(h)** If, as permitted by subsection (f) or the partnership agreement, a partner enters into a transaction with the partnership which otherwise would be prohibited by subsection (b)(2), the partner’s rights and obligations arising from the transaction are the same as those of a person that is not a partner.

**Section 503—Transfer of transferable interest**

**(a)** A transfer, in whole or in part, of a transferable interest:

**(1)** is permissible;

**(2)** does not by itself cause a person’s dissociation as a partner or a dissolution and winding up of the partnership business; and

**(3)** subject to Section 505, does not entitle the transferee to:

**(A)** participate in the management or conduct of the partnership’s business; or

**(B)** except as otherwise provided in subsection (c), have access to records or other information concerning the partnership’s business.

**(b)** A transferee has the right to:

**(1)** receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled; and

**(2)** seek under Section 801(5) a judicial determination that it is equitable to wind up the partnership business.

**(c)** In a dissolution and winding up of a partnership, a transferee is entitled to an account

of the partnership’s transactions only from the date of dissolution.

**(d)** A partnership need not give effect to a transferee’s rights under this section until the

partnership knows or has notice of the transfer.

**(e)** A transfer of a transferable interest in violation of a restriction on transfer contained in

the partnership agreement is ineffective if the intended transferee has knowledge or notice of the

restriction at the time of transfer.

**(f)** Except as otherwise provided in Section 601(4)(B), if a partner transfers a transferable

interest, the transferor retains the rights of a partner other than the transferable interest

transferred and retains all the duties and obligations of a partner.

**(g)** If a partner transfers a transferable interest to a person that becomes a partner with

respect to the transferred interest, the transferee is liable for the partner’s obligations under

Sections 404 and 407 known to the transferee when the transferee becomes a partner.

**Section 601—Events Causing dissociation**

A person is dissociated as a partner when:

**(1)** the partnership knows or has notice of the person’s express will to withdraw as a partner, but, if the person has specified a withdrawal date later than the date the partnership knew or had notice, on that later date;

**(2)** an event stated in the partnership agreement as causing the person’s dissociation occurs;

**(3)** the person is expelled as a partner pursuant to the partnership agreement;

**(4)** the person is expelled as a partner by the affirmative vote or consent of all the other partners if:

**(A)** it is unlawful to carry on the partnership business with the person as a partner;

**(B)** there has been a transfer of all of the person’s transferable interest in the partnership, other than:

**(i)** a transfer for security purposes; or

**(ii)** a charging order in effect under Section 504 which has not been foreclosed;

**(C)** the person is an entity and:

**(i)** the partnership notifies the person that it will be expelled as a partner because the person has filed a statement of dissolution or the equivalent, the person has been administratively dissolved, the person’s charter or the equivalent has been revoked, or the person’s right to conduct business has been suspended by the person’s jurisdiction of formation; and

**(ii)** not later than 90 days after the notification, the statement of dissolution or the equivalent has not been withdrawn, rescinded, or revoked, or the person’s charter or the equivalent or right to conduct business has not been reinstated; or

**(D)** the person is an unincorporated entity that has been dissolved and whose activities and affairs are being wound up;

**(5)** on application by the partnership or another partner, the person is expelled as a partner by judicial order because the person:

**(A)** has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the partnership’s business;

**(B)** has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement or a duty or obligation under Section 409; or

**(C)** has engaged or is engaging in conduct relating to the partnership’s business which makes it not reasonably practicable to carry on the business with the person as a partner;

**(6)** the person:

**(A)** becomes a debtor in bankruptcy;

**(B)** signs an assignment for the benefit of creditors; or

**(C)** seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or

liquidator of the person or of all or substantially all the person’s property;

**(7)** in the case of an individual:

**(A)** the individual dies;

**(B)** a guardian or general conservator for the individual is appointed; or

**(C)** a court orders that the individual has otherwise become incapable of performing the individual’s duties as a partner under this [act] or the partnership agreement;

**(8)** in the case of a person that is a testamentary or inter vivos trust or is acting as a partner by virtue of being a trustee of such a trust, the trust’s entire transferable interest in the partnership is distributed;

**(9)** in the case of a person that is an estate or is acting as a partner by virtue of being a personal representative of an estate, the estate’s entire transferable interest in the partnership is distributed;

**(10)** in the case of a person that is not an individual, the existence of the person terminates;

**(11)** the partnership participates in a merger under [Article] 11 and:

**(A)** the partnership is not the surviving entity; or

**(B)** otherwise as a result of the merger, the person ceases to be a partner;

**(12)** the partnership participates in an interest exchange under [Article] 11 and, as a result of the interest exchange, the person ceases to be a partner;

**(13)** the partnership participates in a conversion under [Article] 11;

**(14)** the partnership participates in a domestication under [Article] 11 and, as a result of the domestication, the person ceases to be a partner; or

**(15)** the partnership dissolves and completes winding up.

**Section 602—Power to Dissociate as Partner; Wrongful Dissociation**

**(a)** A person has the power to dissociate as a partner at any time, rightfully or wrongfully, by withdrawing as a partner by express will under Section 601(1).

**(b)** A person’s dissociation as a partner is wrongful only if the dissociation:

**(1)** is in breach of an express provision of the partnership agreement; or

**(2)** in the case of a partnership for a definite term or particular undertaking, occurs before the expiration of the term or the completion of the undertaking and:

**(A)** the person withdraws as a partner by express will, unless the withdrawal follows not later than 90 days after another person’s dissociation by death or otherwise under Section 601(6) through (10) or wrongful dissociation under this subsection;

**(B)** the person is expelled as a partner by judicial order under Section 601(5);

**(C)** the person is dissociated under Section 601(6); or

**(D)** in the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated because it willfully dissolved or terminated.

**(c)** A person that wrongfully dissociates as a partner is liable to the partnership and to the

other partners for damages caused by the dissociation. The liability is in addition to any debt,

obligation, or other liability of the partner to the partnership or the other partners.

**Section 603—Effect of Dissociation**

**(a)** If a person’s dissociation results in a dissolution and winding up of the partnership business, [Article] 8 applies; otherwise, [Article] 7 applies.

**(b)** If a person is dissociated as a partner:

**(1)** the person’s right to participate in the management and conduct of the partnership’s business terminates, except as otherwise provided in Section 802(c); and

**(2)** the person’s duties and obligations under Section 409 end with regard to matters arising and events occurring after the person’s dissociation, except to the extent the partner participates in winding up the partnership’s business pursuant to Section 802.

**(c)** A person’s dissociation does not of itself discharge the person from any debt, obligation, or other liability to the partnership or the other partners which the person incurred while a partner.

**Section 701—Purchase of interest of person dissociated as partner.**

**(a)** If a person is dissociated as a partner without the dissociation resulting in a dissolution and winding up of the partnership business under Section 801, the partnership shall cause the person’s interest in the partnership to be purchased for a buyout price determined pursuant to subsection (b).

**(b)** The buyout price of the interest of a person dissociated as a partner is the amount that

would have been distributable to the person under Section 806(b) if, on the date of dissociation, the assets of the partnership were sold and the partnership were wound up, with the sale price equal to the greater of:

**(1)** the liquidation value; or

**(2)** the value based on a sale of the entire business as a going concern without the person.

**(c)** Interest accrues on the buyout price from the date of dissociation to the date of

payment, but damages for wrongful dissociation under Section 602(b), and all other amounts

owing, whether or not presently due, from the person dissociated as a partner to the partnership,

must be offset against the buyout price.

**(d)** A partnership shall defend, indemnify, and hold harmless a person dissociated as a

partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the person under Section 702.

**(e)** If no agreement for the purchase of the interest of a person dissociated as a partner is

reached not later than 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in money to the person the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c).

**(f)** If a deferred payment is authorized under subsection (h), the partnership may tender a

written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

**(g)** The payment or tender required by subsection (e) or (f) must be accompanied by the following:

**(1)** a statement of partnership assets and liabilities as of the date of dissociation;

**(2)** the latest available partnership balance sheet and income statement, if any;

**(3)** an explanation of how the estimated amount of the payment was calculated; and

**(4)** written notice that the payment is in full satisfaction of the obligation to

purchase unless, not later than 120 days after the written notice, the person dissociated as a partner commences an action to determine the buyout price, any offsets under subsection (c), or other terms of the obligation to purchase.

**(h)** A person that wrongfully dissociates as a partner before the expiration of a definite

term or the completion of a particular undertaking is not entitled to payment of any part of the buyout price until the expiration of the term or completion of the undertaking, unless the person establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

**(i)** A person dissociated as a partner may maintain an action against the partnership, pursuant to Section 410(b)(2), to determine the buyout price of that person’s interest, any offsets under subsection (c), or other terms of the obligation to purchase. The action must be commenced not later than 120 days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the person’s interest, any offset due under subsection (c), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (h), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney’s fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership’s failure to tender payment or an offer to pay or to comply with subsection (g).

**Section 801—Events causing dissolution**

A partnership is dissolved, and its business must be wound up, upon the occurrence of any of the following:

**(1)** in a partnership at will, the partnership knows or has notice of a person’s express will to withdraw as a partner, other than a partner that has dissociated under Section 601(2) through (10), but, if the person has specified a withdrawal date later than the date the partnership knew or had notice, on the later date;

**(2)** in a partnership for a definite term or particular undertaking:

**(A)** within 90 days after a person’s dissociation by death or otherwise under Section 601(6) through (10) or wrongful dissociation under Section 602(b), the affirmative vote or consent of at least half of the remaining partners to wind up the partnership business, for which purpose a person’s rightful dissociation pursuant to Section 602(b)(2)(A) constitutes that partner's consent to wind up the partnership business;

**(B)** the affirmative vote or consent of all the partners to wind up the partnership business; or

**(C)** the expiration of the term or the completion of the undertaking;

**(3)** an event or circumstance that the partnership agreement states causes dissolution;

**(4)** on application by a partner, the entry by [the appropriate court] of an order dissolving the partnership on the grounds that:

**(A)** the conduct of all or substantially all the partnership’s business is unlawful;

**(B)** the economic purpose of the partnership is likely to be unreasonably frustrated;

**(C)** another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or

**(D)** it is otherwise not reasonably practicable to carry on the partnership business in conformity with the partnership agreement;

**(5)** on application by a transferee, the entry by [the appropriate court] of an order dissolving the partnership on the ground that it is equitable to wind up the partnership business:

**(A)** after the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

**(B)** at any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer; or

**(6)** the passage of 90 consecutive days during which the partnership does not have at least two partners.

**Section 802—Winding up.**

**(a)** A dissolved partnership shall wind up its business and, except as otherwise provided in Section 803, the partnership continues after dissolution only for the purpose of winding up.

**(b)** In winding up its business, the partnership:

**(1)** shall discharge the partnership’s debts, obligations, and other liabilities, settle and close the partnership’s business, and marshal and distribute the assets of the partnership; and

**(2)** may:

**(A)** deliver to the [Secretary of State] for filing a statement of dissolution stating the name of the partnership and that the partnership is dissolved;

**(B)** preserve the partnership business and property as a going concern for a reasonable time;

**(C)** prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

**(D)** transfer the partnership’s property;

**(E)** settle disputes by mediation or arbitration;

**(F)** deliver to the [Secretary of State] for filing a statement of termination stating the name of the partnership and that the partnership is terminated; and

**(G)** perform other acts necessary or appropriate to the winding up.

**(c)** A person whose dissociation as a partner resulted in dissolution may participate in winding up as if still a partner, unless the dissociation was wrongful.

**(d)** If a dissolved partnership does not have a partner and no person has the right to participate in winding up under subsection (c), the personal or legal representative of the last person to have been a partner may wind up the partnership’s business. If the representative does not exercise that right, a person to wind up the partnership’s business may be appointed by the affirmative vote or consent of transferees owning a majority of the rights to receive distributions at the time the consent is to be effective. A person appointed under this subsection has the powers of a partner under Section 804 but is not liable for the debts, obligations, and other liabilities of the partnership solely by reason of having or exercising those powers or otherwise acting to wind up the partnership’s business.

**(e)** On the application of any partner or person entitled under subsection (c) to participate in winding up, the [appropriate court] may order judicial supervision of the winding up of a dissolved partnership, including the appointment of a person to wind up the partnership’s business, if:

**(1)** the partnership does not have a partner and within a reasonable time following the dissolution no person has been appointed under subsection (d); or

**(2)** the applicant establishes other good cause.

**Section 901—Statement of Qualification**

**(a)** A partnership may become a limited liability partnership pursuant to this section.

**(b)** The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the affirmative vote or consent necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly addresses obligations to contribute to the partnership, the affirmative vote or consent necessary to amend those provisions.

**(c)** After the approval required by subsection (b), a partnership may become a limited liability partnership by delivering to the [Secretary of State] for filing a statement of qualification. The statement must contain:

**(1)** the name of the partnership which must comply with Section 902;

**(2)** the street and mailing addresses of the partnership’s principal office and, if different, the street address of an office in this state, if any;

**(3)** the name and street and mailing addresses in this state of the partnership’s registered agent; and

**(4)** a statement that the partnership elects to become a limited liability partnership.

**(d)** A partnership’s status as a limited liability partnership remains effective, regardless of changes in the partnership, until it is canceled pursuant to subsection (f) or administratively revoked pursuant to Section 903.

**(e)** The status of a partnership as a limited liability partnership and the protection against liability of its partners for the debts, obligations, or other liabilities of the partnership while it is a limited liability partnership is not affected by errors or later changes in the information required to be contained in the statement of qualification.

**(f)** A limited liability partnership may amend or cancel its statement of qualification by delivering to the [Secretary of State] for filing a statement of amendment or cancellation. The statement must be approved by the affirmative vote or consent of all the partners and state the name of the limited liability partnership and in the case of:

**(1)** an amendment, state the text of the amendment; and

**(2)** a cancellation, state that the statement of qualification is canceled.

# Revised Uniform Limited Liability Company Act (ULLCA)

**(with 2013 changes)**

**Section 102—Definitions**

In this [act]:

**(1)** “Certificate of organization” means the certificate required by Section 201. The term includes the certificate as amended or restated.

**(2)** “Contribution”, except in the phrase “right of contribution”, means property or a benefit described in Section 402 which is provided by a person to a limited liability company to become a member or in the person’s capacity as a member.

**(3)** “Debtor in bankruptcy” means a person that is the subject of:

**(A)** an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

**(B)** a comparable order under federal, state, or foreign law governing insolvency.

**(4)** “Distribution” means a transfer of money or other property from a limited liability company to a person on account of a transferable interest or in the person’s capacity as a member. The term:

**(A)** includes:

**(i)** a redemption or other purchase by a limited liability company of a transferable interest; and

**(ii)** a transfer to a member in return for the member’s relinquishment of any right to participate as a member in the management or conduct of the company’s activities and affairs or to have access to records or other information concerning the company’s activities and affairs; and

**(B)** does not include amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program.

**(5)** “Foreign limited liability company” means an unincorporated entity formed under the law of a jurisdiction other than this state which would be a limited liability company if formed under the law of this state.

**(6)** “Jurisdiction”, used to refer to a political entity, means the United States, a state, a foreign county, or a political subdivision of a foreign country.

**(7)** “Jurisdiction of formation” means the jurisdiction whose law governs the internal affairs of an entity.

**(8)** “Limited liability company”, except in the phrase “foreign limited liability company” and in [Article] 10, means an entity formed under this [act] or which becomes subject to this [act] under [Article] 10 or Section 110.

**(9)** “Manager” means a person that under the operating agreement of a manager- managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in Section 407(c).

**(10)** “Manager-managed limited liability company” means a limited liability company that qualifies under Section 407(a).

**(11)** “Member” means a person that:

**(A)** has become a member of a limited liability company under Section 401 or was a member in a company when the company became subject to this [act] under Section 110; and

**(B)** has not dissociated under Section 602.

**(12)** “Member-managed limited liability company” means a limited liability company that is not a manager-managed limited liability company.

**(13)** “Operating agreement” means the agreement, whether or not referred to as an operating agreement and whether oral, implied, in a record, or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in Section 105(a). The term includes the agreement as amended or restated.

**(14)** “Organizer” means a person that acts under Section 201 to form a limited liability company.

**(15)** “Person” means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, [general cooperative association,] limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

**(16)** “Principal office” means the principal executive office of a limited liability company or foreign limited liability company, whether or not the office is located in this state.

**(17)** “Property” means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.

**(18)** “Record”, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**(19)** “Registered agent” means an agent of a limited liability company or foreign limited liability company which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the company.

**(20)** “Registered foreign limited liability company” means a foreign limited liability company that is registered to do business in this state pursuant to a statement of registration filed by the [Secretary of State].

**(21)** “Sign” means, with present intent to authenticate or adopt a record:

**(A)** to execute or adopt a tangible symbol; or

**(B)** to attach to or logically associate with the record an electronic symbol, sound, or process.

**(22)** “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

**(23)** “Transfer” includes:

**(A)** an assignment;

**(B)** a conveyance;

**(C)** a sale;

**(D)** a lease;

**(E)** an encumbrance, including a mortgage or security interest;

**(F)** a gift; and

**(G)** a transfer by operation of law.

**(24)** “Transferable interest” means the right, as initially owned by a person in the person’s capacity as a member, to receive distributions from a limited liability company, whether or not the person remains a member or continues to own any part of the right. The term applies to any fraction of the interest, by whomever owned.

**(25)** “Transferee” means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member. The term includes a person that owns a transferable interest under Section 603(a)(3).

**Section 104—Governing Law**

The law of this state governs:

**(1)** the internal affairs of a limited liability company; and

**(2)** the liability of a member as member and a manager as manager for a debt, obligation, or other liability of a limited liability company.

**Section 105—Operating Agreement; Scope, Function and Limitations**

**(a)** Except as otherwise provided in subsections (c) and (d), the operating agreement governs:

**(1)** relations among the members as members and between the members and the limited liability company;

**(2)** the rights and duties under this [act] of a person in the capacity of manager;

**(3)** the activities and affairs of the company and the conduct of those activities and affairs; and

 **(4)** the means and conditions for amending the operating agreement.

**(b)** To the extent the operating agreement does not provide for a matter described in subsection (a), this [act] governs the matter.

**(c)** An operating agreement may not:

**(1)** vary the law applicable under Section 104;

**(2)** vary a limited liability company’s capacity under Section 109 to sue and be sued in its own name;

**(3)** vary any requirement, procedure, or other provision of this [act] pertaining to:

**(A)** registered agents; or

**(B)** the [Secretary of State], including provisions pertaining to records authorized or required to be delivered to the [Secretary of State] for filing under this [act];

**(4)** vary the provisions of Section 204;

**(5)** alter or eliminate the duty of loyalty or the duty of care, except as otherwise provided in subsection (d);

**(6)** eliminate the contractual obligation of good faith and fair dealing under Section 409(d), but the operating agreement may prescribe the standards, if not manifestly unreasonable, by which the performance of the obligation is to be measured;

**(7)** relieve or exonerate a person from liability for conduct involving bad faith, willful or intentional misconduct, or knowing violation of law;

**(8)** unreasonably restrict the duties and rights under Section 410, but the operating agreement may impose reasonable restrictions on the availability and use of information obtained under that section and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

**(9)** vary the causes of dissolution specified in Section 701(a)(4);

**(10)** vary the requirement to wind up the company’s activities and affairs as specified in Section 702(a), (b)(1), and (e);

**(11)** unreasonably restrict the right of a member to maintain an action under [Article] 8;

**(12)** vary the provisions of Section 805, but the operating agreement may provide that the company may not have a special litigation committee;

**(13)** vary the right of a member to approve a merger, interest exchange, conversion, or domestication under Section 1023(a)(2), 1033(a)(2), 1043(a)(2), or 1053(a)(2);

**(14)** vary the required contents of a plan of merger under Section 1022(a), plan of interest exchange under Section 1032(a), plan of conversion under Section 1042(a), or plan of domestication under Section 1052(a); or

**(15)** except as otherwise provided in Sections 106 and 107(b), restrict the rights under this [act] of a person other than a member or manager.

**(d)** Subject to subsection (c)(7), without limiting other terms that may be included in an operating agreement, the following rules apply:

**(1)** The operating agreement may:

**(A)** specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts; and

**(B)** alter the prohibition in Section 405(a)(2) so that the prohibition requires only that the company’s total assets not be less than the sum of its total liabilities.

**(2)** To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member otherwise would have under this [act] and imposes the responsibility on one or more other members, the agreement also may eliminate or limit any fiduciary duty of the member relieved of the responsibility which would have pertained to the responsibility.

**(3)** If not manifestly unreasonable, the operating agreement may:

**(A)** alter or eliminate the aspects of the duty of loyalty stated in Section 409(b) and (i);

**(B)** identify specific types or categories of activities that do not violate the duty of loyalty;

**(C)** alter the duty of care, but may not authorize conduct involving bad faith, willful or intentional misconduct, or knowing violation of law; and

**(D)** alter or eliminate any other fiduciary duty.

**(e)** The court shall decide as a matter of law whether a term of an operating agreement is manifestly unreasonable under subsection (c)(6) or (d)(3). The court:

**(1)** shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

**(2)** may invalidate the term only if, in light of the purposes, activities, and affairs of the limited liability company, it is readily apparent that:

**(A)** the objective of the term is unreasonable; or

 **(B)** the term is an unreasonable means to achieve the term’s objective.

**Section 201—Formation of Limited Liability Company; Certificate of Organization**

**(a)** One or more persons may act as organizers to form a limited liability company by delivering to the [Secretary of State] for filing a certificate of organization.

**(b)** A certificate of organization must state:

 **(1)** the name of the limited liability company, which must comply with Section 112;

 **(2)** the street and mailing addresses of the company’s principal office; and

**(3)** the name and street and mailing addresses in this state of the company’s registered agent.

**(c)** A certificate of organization may contain statements as to matters other than those required by subsection (b), but may not vary or otherwise affect the provisions specified in Section 105(c) and (d) in a manner inconsistent with that section. However, a statement in a certificate of organization is not effective as a statement of authority.

**(d)** A limited liability company is formed when the certificate of organization becomes effective and at least one person has become a member.

**Section 301—No Agency Power of Member as Member—Current Edition**

**(a)** A member is not an agent of a limited liability company solely by reason of being a member.

**(b)** A person’s status as a member does not prevent or restrict law other than this [act] from imposing liability on a limited liability company because of the person’s conduct.

***Section 301—Agency of Members and Managers—Previous Edition***

***(a)*** *Subject to subsections (b) and (c):*

***(1)*** *Each member is an agent of the limited liability company for the purpose of its business, and an act of a member, including the signing of an instrument in the company's name, for apparently carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company, unless the member had no authority to act for the company in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority.*

***(2)*** *An act of a member which is not apparently for carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company only if the act was authorized by the other members.*

***(b)*** *Subject to subsection (c), in a manager-managed company:*

***(1)*** *A member is not an agent of the company for the purpose of its business solely by reason of being a member. Each manager is an agent of the company for the purpose of its business, and an act of a manager, including the signing of an instrument in the company's name, for apparently carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company, unless the manager had no authority to act for the company in the particular matter and the person with whom the manager was dealing knew or had notice that the manager lacked authority.*

***(2)*** *An act of a manager which is not apparently for carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company only if the act was authorized under Section 404.*

***(c)*** *Unless the articles of organization limit their authority, any member of a member-managed company or manager of a manager-managed company may sign and deliver any instrument transferring or affecting the company's interest in real property. The instrument is conclusive in favor of a person who gives value without knowledge of the lack of the authority of the person signing and delivering the instrument.*

**Section 302—Statement of Limited Liability Company Authority**

**(a)** A limited liability company may deliver to the [Secretary of State] for filing a statement of authority. The statement:

**(1)** must include the name of the company and the name and street and mailing addresses of its registered agent;

**(2)** with respect to any position that exists in or with respect to the company, may state the authority, or limitations on the authority, of all persons holding the position to:

**(A)** sign an instrument transferring real property held in the name of the company; or

**(B)** enter into other transactions on behalf of, or otherwise act for or bind, the company; and

**(3)** may state the authority, or limitations on the authority, of a specific person to:

**(A)** sign an instrument transferring real property held in the name of the company; or

**(B)** enter into other transactions on behalf of, or otherwise act for or bind, the company.

**(b)** To amend or cancel a statement of authority filed by the [Secretary of State], a limited liability company must deliver to the [Secretary of State] for filing an amendment or cancellation stating:

**(1)** the name of the company;

**(2)** the name and street and mailing addresses of the company’s registered agent;

**(3)** the date the statement being affected became effective; and

**(4)** the contents of the amendment or a declaration that the statement is canceled.

**(c)** A statement of authority affects only the power of a person to bind a limited liability company to persons that are not members.

**(d)** Subject to subsection (c) and Section 103(d), and except as otherwise provided in subsections (f), (g), and (h), a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of any person’s knowledge or notice of the limitation.

**(e)** Subject to subsection (c), a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value:

**(1)** the person has knowledge to the contrary;

**(2)** the statement has been canceled or restrictively amended under subsection (b); or

**(3)** a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

**(f)** Subject to subsection (c), an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company, a certified copy of which statement is recorded in the office for recording transfers of the real property, is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

**(1)** the statement has been canceled or restrictively amended under subsection (b), and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property; or

**(2)** a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective, and a certified copy of the later-effective statement is recorded in the office for recording transfers of the real property.

**(g)** Subject to subsection (c), if a certified copy of an effective statement containing a limitation on the authority to transfer real property held in the name of a limited liability company is recorded in the office for recording transfers of that real property, all persons are deemed to know of the limitation.

**(h)** Subject to subsection (i), an effective statement of dissolution or termination is a cancellation of any filed statement of authority for the purposes of subsection (f) and is a limitation on authority for the purposes of subsection (g).

**(i)** After a statement of dissolution becomes effective, a limited liability company may deliver to the [Secretary of State] for filing and, if appropriate, may record a statement of authority that is designated as a post-dissolution statement of authority. The statement operates as provided in subsections (f) and (g).

**(j)** Unless earlier canceled, an effective statement of authority is canceled by operation of law five years after the date on which the statement, or its most recent amendment, becomes effective. This cancellation operates without need for any recording under subsection (f) or (g).

**(k)** An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for purposes of subsection (f)(1).

**Section 304—Liability of Members and Managers**

**(a)** A debt, obligation, or other liability of a limited liability company is solely the debt, obligation, or other liability of the company. A member or manager is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the company solely by reason of being or acting as a member or manager. This subsection applies regardless of the dissolution of the company.

**(b)** The failure of a limited liability company to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a member or manager for a debt, obligation, or other liability of the company.

**Section 401—Becoming Member**

**(a)** If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.

**(b)** If a limited liability company is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the company. The organizer acts on behalf of the persons in forming the company and may be, but need not be, one of the persons.

**(c)** After formation of a limited liability company, a person becomes a member:

 **(1)** as provided in the operating agreement;

 **(2)** as the result of a transaction effective under [Article] 10;

 **(3)** with the affirmative vote or consent of all the members; or

 **(4)** as provided in Section 701(a)(3).

**(d)** A person may become a member without:

 **(1)** acquiring a transferable interest; or

 **(2)** making or being obligated to make a contribution to the limited liability company.

**Section 404—Sharing of and Right to Distributions Before Dissolution**

**(a)** Any distribution made by a limited liability company before its dissolution and winding up must be in equal shares among members and persons dissociated as members, except to the extent necessary to comply with a transfer effective under Section 502 or charging order in effect under Section 503.

**(b)** A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person’s dissociation does not entitle the person to a distribution.

**(c)** A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in Section 707(d), a company may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person’s share of distributions.

**(d)** If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. However, the company’s obligation to make a distribution is subject to offset for any amount owed to the company by the member or a person dissociated as a member on whose account the distribution is made.

**Section 402—Form of Contribution**

A contribution may consist of property transferred to, services performed for, or another benefit provided to the limited liability company or an agreement to transfer property to, perform services for, or provide another benefit to the company.

**Section 407—Management of a Limited Liability Company**

**(a)** A limited liability company is a member-managed limited liability company unless the operating agreement:

 **(1)** expressly provides that:

 **(A)** the company is or will be “manager-managed”;

 **(B)** the company is or will be “managed by managers”; or

 **(C)** management of the company is or will be “vested in managers”; or

 **(2)** includes words of similar import.

**(b)** In a member-managed limited liability company, the following rules apply:

**(1)** Except as expressly provided in this [act], the management and conduct of the company are vested in the members.

**(2)** Each member has equal rights in the management and conduct of the company’s activities and affairs.

**(3)** A difference arising among members as to a matter in the ordinary course of the activities and affairs of the company may be decided by a majority of the members.

**(4)** The affirmative vote or consent of all the members is required to:

**(A)** undertake an act outside the ordinary course of the activities and affairs of the company; or

 **(B)** amend the operating agreement.

**(c)** In a manager-managed limited liability company, the following rules apply:

**(1)** Except as expressly provided in this [act], any matter relating to the activities and affairs of the company is decided exclusively by the manager, or, if there is more than one manager, by a majority of the managers.

**(2)** Each manager has equal rights in the management and conduct of the company’s activities and affairs.

**(3)** The affirmative vote or consent of all members is required to:

**(A)** undertake an act outside the ordinary course of the company’s activities and affairs; or

 **(B)** amend the operating agreement.

**(4)** A manager may be chosen at any time by the affirmative vote or consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the affirmative vote or consent of a majority of the members without notice or cause.

**(5)** A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.

**(6)** A person’s ceasing to be a manager does not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a manager.

**(d)** An action requiring the vote or consent of members under this [act] may be taken without a meeting, and a member may appoint a proxy or other agent to vote, consent, or otherwise act for the member by signing an appointing record, personally or by the member’s agent.

**(e)** The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the company loses the right to participate in management as a member and a manager.

**(f)** A limited liability company shall reimburse a member for an advance to the company beyond the amount of capital the member agreed to contribute.

**(g)** A payment or advance made by a member which gives rise to a limited liability company obligation under subsection (f) or Section 408(a) constitutes a loan to the company which accrues interest from the date of the payment or advance.

**(h)** A member is not entitled to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.

**Section 409—Standards of Conduct for Members and Managers**

**(a)** A member of a member-managed limited liability company owes to the company and, subject to Section 801, the other members the duties of loyalty and care stated in subsections (b) and (c).

**(b)** The fiduciary duty of loyalty of a member in a member-managed limited liability company includes the duties:

**(1)** to account to the company and hold as trustee for it any property, profit, or benefit derived by the member:

 **(A)** in the conduct or winding up of the company’s activities and affairs;

 **(B)** from a use by the member of the company’s property; or

 **(C)** from the appropriation of a company opportunity;

**(2)** to refrain from dealing with the company in the conduct or winding up of the company’s activities and affairs as or on behalf of a person having an interest adverse to the company; and

**(3)** to refrain from competing with the company in the conduct of the company’s activities and affairs before the dissolution of the company.

**(c)** The duty of care of a member of a member-managed limited liability company in the conduct or winding up of the company’s activities and affairs is to refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, or knowing violation of law.

**(d)** A member shall discharge the duties and obligations under this [act] or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

**(e)** A member does not violate a duty or obligation under this [act] or under the operating agreement solely because the member’s conduct furthers the member’s own interest.

**(f)** All the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

**(g)** It is a defense to a claim under subsection (b)(2) and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

**(h)** If, as permitted by subsection (f) or (i)(6) or the operating agreement, a member enters into a transaction with the limited liability company which otherwise would be prohibited by subsection (b)(2), the member’s rights and obligations arising from the transaction are the same as those of a person that is not a member.

**(i)** In a manager-managed limited liability company, the following rules apply:

**(1)** Subsections (a), (b), (c), and (g) apply to the manager or managers and not the members.

 **(2)** The duty stated under subsection (b)(3) continues until winding up is completed.

 **(3)** Subsection (d) applies to managers and members.

 **(4)** Subsection (e) applies only to members.

 **(5)** The power to ratify under subsection (f) applies only to the members.

**(6)** Subject to subsection (d), a member does not have any duty to the company or to any other member solely by reason of being a member.

**Section 502—Transfer of Transferable Interest**

**(a)** Subject to Section 503(f), a transfer, in whole or in part, of a transferable interest:

 **(1)** is permissible;

**(2)** does not by itself cause a person’s dissociation as a member or a dissolution and winding up of the limited liability company’s activities and affairs; and

**(3)** subject to Section 504, does not entitle the transferee to:

**(A)** participate in the management or conduct of the company’s activities and affairs; or

**(B)** except as otherwise provided in subsection (c), have access to records or other information concerning the company’s activities and affairs.

**(b)** A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

**(c)** In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the company’s transactions only from the date of dissolution.

**(d)** A transferable interest may be evidenced by a certificate of the interest issued by a limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

**(e)** A limited liability company need not give effect to a transferee’s rights under this section until the company knows or has notice of the transfer.

**(f)** A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective if the intended transferee has knowledge or notice of the restriction at the time of transfer.

**(g)** Except as otherwise provided in Section 602(5)(B), if a member transfers a transferable interest, the transferor retains the rights of a member other than the transferable interest transferred and retains all the duties and obligations of a member.

**(h)** If a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member’s obligations under Sections 403 and 406 known to the transferee when the transferee becomes a member.

**Section 601—Power to Dissociate as Member; Wrongful Dissociation**

**(a)** A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under Section 602(1).

**(b)** A person’s dissociation as a member is wrongful only if the dissociation:

**(1)** is in breach of an express provision of the operating agreement; or

**(2)** occurs before the completion of the winding up of the limited liability company and:

**(A)** the person withdraws as a member by express will;

**(B)** the person is expelled as a member by judicial order under Section 602(6);

**(C)** the person is dissociated under Section 602(8); or

**(D)** in the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated.

**(c)** A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to Section 801, to the other members for damages caused by the dissociation. The liability is in addition to any debt, obligation, or other liability of the member to the company or the other members.

**Section 602—Events Causing Dissociation**

A person is dissociated as a member when:

**(1)** the limited liability company knows or has notice of the person’s express will to withdraw as a member, but, if the person has specified a withdrawal date later than the date the company knew or had notice, on that later date;

**(2)** an event stated in the operating agreement as causing the person’s dissociation occurs;

 **(3)** the person’s entire interest is transferred in a foreclosure sale under Section 503(f);

 **(4)** the person is expelled as a member pursuant to the operating agreement;

**(5)** the person is expelled as a member by the affirmative vote or consent of all the other members if:

**(A)** it is unlawful to carry on the limited liability company’s activities and affairs with the person as a member;

**(B)** there has been a transfer of all the person’s transferable interest in the company, other than:

**(i)** a transfer for security purposes; or

**(ii)** a charging order in effect under Section 503 which has not been foreclosed;

**(C)** the person is an entity and:

**(i)** the company notifies the person that it will be expelled as a member because the person has filed a statement of dissolution or the equivalent, the person has been administratively dissolved, the person’s charter or the equivalent has been revoked, or the person’s right to conduct business has been suspended by the person’s jurisdiction of formation; and

**(ii)** not later than 90 days after the notification, the statement of dissolution or the equivalent has not been withdrawn, rescinded, or revoked, the person has not been reinstated, or the person’s charter or the equivalent or right to conduct business has not been reinstated; or

**(D)** the person is an unincorporated entity that has been dissolved and whose activities and affairs are being wound up;

**(6)** on application by the limited liability company or a member in a direct action under Section 801, the person is expelled as a member by judicial order because the person:

**(A)** has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the company’s activities and affairs;

**(B)** has committed willfully or persistently, or is committing willfully or persistently, a material breach of the operating agreement or a duty or obligation under Section 409; or

**(C)** has engaged or is engaging in conduct relating to the company’s activities and affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as a member;

**(7)** in the case of an individual:

**(A)** the individual dies; or

**(B)** in a member-managed limited liability company:

**(i)** a guardian or general conservator for the individual is appointed; or

**(ii)** a court orders that the individual has otherwise become incapable of performing the individual’s duties as a member under this [act] or the operating agreement;

**(8)** in a member-managed limited liability company, the person:

**(A)** becomes a debtor in bankruptcy;

**(B)** signs an assignment for the benefit of creditors; or

**(C)** seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all the person’s property;

**(9)** in the case of a person that is a testamentary or inter vivos trust or is acting as a member by virtue of being a trustee of such a trust, the trust’s entire transferable interest in the limited liability company is distributed;

**(10)** in the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate’s entire transferable interest in the limited liability company is distributed;

**(11)** in the case of a person that is not an individual, the existence of the person terminates;

**(12)** the limited liability company participates in a merger under [Article] 10 and:

**(A)** the company is not the surviving entity; or

**(B)** otherwise as a result of the merger, the person ceases to be a member;

**(13)** the limited liability company participates in an interest exchange under [Article] 10 and, as a result of the interest exchange, the person ceases to be a member;

**(14)** the limited liability company participates in a conversion under [Article] 10;

**(15)** the limited liability company participates in a domestication under [Article] 10 and, as a result of the domestication, the person ceases to be a member; or

**(16)** the limited liability company dissolves and completes winding up.

**Section 603—Effect of Dissociation**

**(a)** If a person is dissociated as a member:

**(1)** the person’s right to participate as a member in the management and conduct of the limited liability company’s activities and affairs terminates;

**(2)** the person’s duties and obligations under Section 409 as a member end with regard to matters arising and events occurring after the person’s dissociation; and

**(3)** subject to Section 504 and [Article] 10, any transferable interest owned by the person in the person’s capacity as a member immediately before dissociation is owned by the person solely as a transferee.

**(b)** A person’s dissociation as a member does not of itself discharge the person from any debt, obligation, or other liability to the limited liability company or the other members which the person incurred while a member.

**Section 701—Events Causing Dissolution**

**(a)** A limited liability company is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following:

 **(1)** an event or circumstance that the operating agreement states causes dissolution;

 **(2)** the affirmative vote or consent of all the members;

**(3)** the passage of 90 consecutive days during which the company has no members unless before the end of the period:

**(A)** consent to admit at least one specified person as a member is given by transferees owning the rights to receive a majority of distributions as transferees at the time the consent is to be effective; and

**(B)** at least one person becomes a member in accordance with the consent;

**(4)** on application by a member, the entry by [the appropriate court] of an order dissolving the company on the grounds that:

**(A)** the conduct of all or substantially all the company’s activities and affairs is unlawful;

**(B)** it is not reasonably practicable to carry on the company’s activities and affairs in conformity with the certificate of organization and the operating agreement; or

**(C)** the managers or those members in control of the company:

**(i)** have acted, are acting, or will act in a manner that is illegal or fraudulent; or

**(ii)** have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant; or

**(5)** the signing and filing of a statement of administrative dissolution by the [Secretary of State] under Section 708.

**(b)** In a proceeding brought under subsection (a)(4)(C), the court may order a remedy other than dissolution.

**Section 702—Winding Up**

**(a)** A dissolved limited liability company shall wind up its activities and affairs and, except as otherwise provided in Section 703, the company continues after dissolution only for the purpose of winding up.

**(b)** In winding up its activities and affairs, a limited liability company:

**(1)** shall discharge the company’s debts, obligations, and other liabilities, settle and close the company’s activities and affairs, and marshal and distribute the assets of the company; and

**(2)** may:

**(A)** deliver to the [Secretary of State] for filing a statement of dissolution stating the name of the company and that the company is dissolved;

**(B)** preserve the company activities, affairs, and property as a going concern for a reasonable time;

**(C)** prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

**(D)** transfer the company’s property;

**(E)** settle disputes by mediation or arbitration;

**(F)** deliver to the [Secretary of State] for filing a statement of termination stating the name of the company and that the company is terminated; and

**(G)** perform other acts necessary or appropriate to the winding up.

**(c)** If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities and affairs of the company. If the person does so, the person has the powers of a sole manager under Section 407(c) and is deemed to be a manager for the purposes of Section 304(a).

**(d)** If the legal representative under subsection (c) declines or fails to wind up the limited liability company’s activities and affairs, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this subsection:

**(1)** has the powers of a sole manager under Section 407(c) and is deemed to be a manager for the purposes of Section 304(a); and

**(2)** shall deliver promptly to the [Secretary of State] for filing an amendment to the company’s certificate of organization stating:

**(A)** that the company has no members;

**(B)** the name and street and mailing addresses of the person; and

**(C)** that the person has been appointed pursuant to this subsection to wind up the company.

**(e)** [The appropriate court] may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the company’s activities and affairs:

**(1)** on the application of a member, if the applicant establishes good cause;

**(2)** on the application of a transferee, if:

**(A)** the company does not have any members;

**(B)** the legal representative of the last person to have been a member declines or fails to wind up the company’s activities; and

**(C)** within a reasonable time following the dissolution a person has not been appointed pursuant to subsection (c); or

**(3)** in connection with a proceeding under Section 701(a)(4).

# Delaware Limited Liability Company Act

**Section 18-402—Management of Limited Liability Company**

Unless otherwise provided in a limited liability company agreement, the management of a limited liability company shall be vested in its members in proportion to the then current percentage or other interest of members in the profits of the limited liability company owned by all of the members, the decision of members owning more than 50 percent of the said percentage or other interest in the profits controlling; provided however, that if a limited liability company agreement provides for the management, in whole or in part, of a limited liability company by a manager, the management of the limited liability company, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement. The manager shall also hold the offices and have the responsibilities accorded to the manager by or in the manner provided in a limited liability company agreement. Subject to § 18-602 of this title, a manager shall cease to be a manager as provided in a limited liability company agreement. A limited liability company may have more than 1 manager. Unless otherwise provided in a limited liability company agreement, each member and manager has the authority to bind the limited liability company.

**Section 18-1101—Construction and Application of Chapter and Limited Liability Company Agreement**

**(a)**The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

**(b)**It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.

**(c)**To the extent that, at law or in equity, a member or manager or other person has duties (including fiduciary duties) to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement, the member's or manager's or other person's duties may be expanded or restricted or eliminated by provisions in the limited liability company agreement; provided, that the limited liability company agreement may not eliminate the implied contractual covenant of good faith and fair dealing.

**(d)**Unless otherwise provided in a limited liability company agreement, a member or manager or other person shall not be liable to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement for breach of fiduciary duty for the member's or manager's or other person's good faith reliance on the provisions of the limited liability company agreement.

**(e)**A limited liability company agreement may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties (including fiduciary duties) of a member, manager or other person to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement; provided, that a limited liability company agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

**(f)**Unless the context otherwise requires, as used herein, the singular shall include the plural and the plural may refer to only the singular. The use of any gender shall be applicable to all genders. The captions contained herein are for purposes of convenience only and shall not control or affect the construction of this chapter.

**(g)**Sections 9-406 and 9-408 of this title do not apply to any interest in a limited liability company, including all rights, powers and interests arising under a limited liability company agreement or this chapter. This provision prevails over §§ 9-406 and 9-408 of this title.

**(h)**Action validly taken pursuant to 1 provision of this chapter shall not be deemed invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this chapter but fails to satisfy 1 or more requirements prescribed by such other provision.

**(i)**A limited liability company agreement that provides for the application of Delaware law shall be governed by and construed under the laws of the State of Delaware in accordance with its terms.

**(j)**The provisions of this chapter shall apply whether a limited liability company has 1 member or more than 1 member.

# Virginia Limited Liability Company Act

**Section 13.1-1021.1—Agency of Members and Managers**

**(A)** Subject to subsections B and C:

**(1)** Each member is an agent of the limited liability company for the purpose of its business;

**(2)** An act of a member, including the signing of an instrument in the limited liability company name, for apparently carrying on in the ordinary course the limited liability company business or business of the kind carried on by the limited liability company, binds the limited liability company, unless the member had no authority to act for the limited liability company in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority; and

**(3)** An act of a member which is not apparently for carrying on in the ordinary course the limited liability company business or business of the kind carried on by the limited liability company binds the limited liability company only if the act was authorized by the other members in accordance with § 13.1-1022.

**(B)** Subject to subsection C, in a manager-managed limited liability company:

**(1)** If the articles of organization specify that the limited liability company is to be managed by a manager or managers, a member is not an agent of the limited liability company for the purpose of its business solely by reason of being a member;

**(2)** Each manager is an agent of the limited liability company for the purpose of its business;

**(3)** An act of a manager, including the signing of an instrument in the limited liability company name, for apparently carrying on in the ordinary course the limited liability company business or business of the kind carried on by the limited liability company, binds the limited liability company, unless the manager had no authority to act for the limited liability company in the particular matter and the person with whom the manager was dealing knew or had notice that the manager lacked authority; and

**(4)** An act of a manager which is not apparently for carrying on in the ordinary course the limited liability company business or business of the kind carried on by the limited liability company binds the company only if the act was authorized in accordance with § 13.1-1024.

**(C)** Unless the articles of organization limit their authority, any member in a member-managed limited liability company, or any manager in a manager-managed limited liability company, may sign and deliver any instrument transferring or affecting the limited liability company's interest in real property, which instrument shall be conclusive in favor of a person who gives value without knowledge of the lack of authority of the person signing and delivering the instrument.

**Section 13.1-1022—Management of Limited Liability Company**

**(A)** Except to the extent that the articles of organization or an operating agreement provides in writing for management of a limited liability company by a manager or managers, management of a limited liability company shall be vested in its members.

**(B)** Unless otherwise provided in this chapter, in the articles of organization, or in an operating agreement, the members of a limited liability company shall vote in proportion to their contributions to the limited liability company, as adjusted from time to time, and a majority vote of the members of a limited liability company shall consist of the vote or other approval of members having a majority share of the voting power of all members.

**(C)** Unless otherwise provided in this chapter, in the articles of organization, or in an operating agreement, any action required or permitted to be taken by the members of a limited liability company may be taken upon a majority vote of the members.

**(D)** Unless otherwise provided in the articles of organization or an operating agreement, the members of a limited liability company have the power and authority to delegate to one or more other persons the members' rights and powers to manage and control the business and affairs of the limited liability company, including to delegate to agents, officers and employees of a member or manager of the limited liability company, and to delegate by a management agreement or other agreement with, or otherwise to, other persons. Such persons may be denominated as officers of the limited liability company without being deemed to have the status of a manager, unless designated as a manager in the articles of organization or an operating agreement.

**(E)** Unless otherwise provided in the articles of organization or an operating agreement, the members of a limited liability company may take action permitted or required to be taken by the members without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting. A consent transmitted by a member by electronic transmission shall be deemed to be signed for the purposes of this section. Unless otherwise provided in the articles of organization or an operating agreement, on any matter that is to be voted on by members, the members may vote in person or by proxy.

**(F)** The articles of organization or an operating agreement may provide for classes or groups of members having such relative rights, powers, and duties as the articles of organization or an operating agreement may provide, and may make provision for the future creation in the manner provided in the articles of organization or an operating agreement of additional classes or groups of members having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members.

**(G)** The articles of organization, an operating agreement, or a plan of merger may provide that dissenters' rights with respect to a membership interest shall be available for any class or group of members in connection with any amendment of an operating agreement, any merger in which the limited liability company is a party, any conversion of the limited liability company to another business form, any transfer to or domestication in any other jurisdiction by the limited liability company, or the sale of all or substantially all of the limited liability company's assets.

**Section 13.1-1024.1—General Standards of Conduct for a Manager**

**(A)** A manager shall discharge his or its duties as a manager in accordance with the manager's good faith business judgment of the best interests of the limited liability company.

**(B)** Unless a manager has knowledge or information concerning the matter in question that makes reliance unwarranted, a manager is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

**(1)** One or more managers or employees of the limited liability company whom the manager believes, in good faith, to be reliable and competent in the matters presented;

**(2)** Legal counsel, public accountants, or other persons as to matters the manager believes, in good faith, are within the person's professional or expert competence; or

**(3)** A committee of the managers of which the manager is not a member if the manager believes, in good faith, that the committee merits confidence.

**(C)** A person alleging a violation of this section has the burden of proving the violation.

**(D)** For the purposes of this section only, the term "manager" shall be deemed to include any member that is participating in the management of the limited liability company.

**Section 13.1-1025—Limited Liability of Members and Managers; Exceptions.**

**(A)** In any proceeding brought by or in the right of a limited liability company or brought by or on behalf of members of the limited liability company, the damages assessed against a manager or member arising out of a single transaction, occurrence or course of conduct shall not exceed the lesser of:

**(1)** The monetary amount, including the elimination of liability, specified in writing in the articles of organization or an operating agreement as a limitation on or elimination of the liability of the manager or member; or

**(2)** The greater of (i) $100,000 or (ii) the amount of cash compensation received by the manager or member from the limited liability company during the twelve months immediately preceding the act or omission for which liability was imposed; however, the cash compensation of a manager or member shall not be deemed to include amounts constituting distributions for the purposes of § 13.1-1035.

**(B)** The liability of a manager or member shall not be limited as provided in this section to the extent otherwise provided in writing in the articles of organization or an operating agreement, or if the manager or member engaged in willful misconduct or a knowing violation of the criminal law.

**(C)** No limitation on or elimination of liability adopted pursuant to this section may be affected by any amendment of the articles of organization or operating agreement with respect to any act or omission occurring before such amendment.

**Section 13.1-1027—Contributions**

**(A)** The contributions of a member to a limited liability company may be in cash, property, or services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services.

**(B)** Except as provided in the articles of organization or an operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, he is obligated at the option of the limited liability company to contribute cash equal to that portion of the value, as stated in the limited liability company records required to be kept by § 13.1-1028, of such contribution that has not been made.

**(C)** Unless otherwise provided in the articles of organization or an operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit or otherwise acts in reliance on the original obligation may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.

**(D)** The articles of organization or an operating agreement may provide in writing that the interest of any member who fails to make any contribution that he is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating his interest in the limited liability company to that of nondefaulting members, a forced sale of his interest in the limited liability company, forfeiture of his interest in the limited liability company, the lending by other members of the amount necessary to meet his commitment, a fixing of the value of his interest in the limited liability company by appraisal or by formula and redemption or sale of his interest in the limited liability company at such value, or other penalty or consequence.

**(E)** No promise by a member to contribute to a limited liability company is enforceable unless set out in a writing signed by the member.

**(F)** The contributions of a corporation to a limited liability company of which such corporation is a member may be in the form of an asset for which an application for a project requiring a certificate has been approved by the Commissioner pursuant to the provisions of Title 32.1. No further approval by such Commissioner shall be required as a condition to the validity of the member's contribution of such an asset to the limited liability company if (i) both the member and the limited liability company have their principal offices within the same city or county of the Commonwealth, (ii) such contributing member owns at least one-third of the membership interests of the limited liability company, and (iii) the assets contributed by such member to the limited liability company comprise not more than ten percent of such assets of the member.

**Section 13.1-1029—Sharing of Profits and Losses**

The profits and losses of a limited liability company shall be allocated among the members, and among classes of members, on the basis provided in writing in the articles of organization or an operating agreement. If the articles of organization or an operating agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value, as stated in the limited liability company records required to be kept pursuant to § 13.1-1028, of the contributions made by each member to the extent they have been received by the limited liability company.

# Delaware General Corporation Law (DGCL)

**Section 101. Incorporators; How Corporation formed; purposes.**

**(a)** Any person, partnership, association or corporation, singly or jointly with others, and without regard to such person's or entity's residence, domicile or state of incorporation, may incorporate or organize a corporation under this chapter by filing with the Division of Corporations in the Department of State a certificate of incorporation which shall be executed, acknowledged and filed in accordance with § 103 of this title.

**(b)** A corporation may be incorporated or organized under this chapter to conduct or promote any lawful business or purposes, except as may otherwise be provided by the Constitution or other law of this State.

**(c)** Corporations for constructing, maintaining and operating public utilities, whether in or outside of this State, may be organized under this chapter, but corporations for constructing, maintaining and operating public utilities within this State shall be subject to, in addition to this chapter, the special provisions and requirements of Title 26 applicable to such corporations.

**Section 102. Contents of Certificate of Incorporation**

**(a)** The certificate of incorporation shall set forth:

**(1)** The name of the corporation, which

**(i)** shall contain 1 of the words "association," "company," "corporation," "club," "foundation," "fund," "incorporated," "institute," "society," "union," "syndicate," or "limited," (or abbreviations thereof, with or without punctuation), or words (or abbreviations thereof, with or without punctuation) of like import of foreign countries or jurisdictions (provided they are written in roman characters or letters); provided, however, that the Division of Corporations in the Department of State may waive such requirement (unless it determines that such name is, or might otherwise appear to be, that of a natural person) if such corporation executes, acknowledges and files with the Secretary of State in accordance with § 103 of this title a certificate stating that its total assets, as defined in § 503(i) of this title, are not less than $10,000,000, or, in the sole discretion of the Division of Corporations in the Department of State, if the corporation is both a nonprofit nonstock corporation and an association of professionals,

**(ii)** shall be such as to distinguish it upon the records in the office of the Division of Corporations in the Department of State from the names that are reserved on such records and from the names on such records of each other corporation, partnership, limited partnership, limited liability company, registered series of a limited liability company or statutory trust organized or registered as a domestic or foreign corporation, partnership, limited partnership, limited liability company, registered series of a limited liability company or statutory trust under the laws of this State, except with the written consent of the person who has reserved such name or such other foreign corporation or domestic or foreign partnership, limited partnership, limited liability company, registered series of a limited liability company or statutory trust, executed, acknowledged and filed with the Secretary of State in accordance with § 103 of this title, or except that, without prejudicing any rights of the person who has reserved such name or such other foreign corporation or domestic or foreign partnership, limited partnership, limited liability company, registered series of a limited liability company or statutory trust, the Division of Corporations in the Department of State may waive such requirement if the corporation demonstrates to the satisfaction of the Secretary of State that the corporation or a predecessor entity previously has made substantial use of such name or a substantially similar name, that the corporation has made reasonable efforts to secure such written consent, and that such waiver is in the interest of the State,

**(iii)** except as permitted by § 395 of this title, shall not contain the word "trust," and

**(iv)** shall not contain the word "bank," or any variation thereof, except for the name of a bank reporting to and under the supervision of the State Bank Commissioner of this State or a subsidiary of a bank or savings association (as those terms are defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813), or a corporation regulated under the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or the Home Owners' Loan Act, as amended, 12 U.S.C. § 1461 et seq.; provided, however, that this section shall not be construed to prevent the use of the word "bank," or any variation thereof, in a context clearly not purporting to refer to a banking business or otherwise likely to mislead the public about the nature of the business of the corporation or to lead to a pattern and practice of abuse that might cause harm to the interests of the public or the State as determined by the Division of Corporations in the Department of State;

**(2)** The address (which shall be stated in accordance with § 131(c) of this title) of the corporation's registered office in this State, and the name of its registered agent at such address;

**(3)** The nature of the business or purposes to be conducted or promoted. It shall be sufficient to state, either alone or with other businesses or purposes, that the purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware, and by such statement all lawful acts and activities shall be within the purposes of the corporation, except for express limitations, if any;

**(4)** If the corporation is to be authorized to issue only 1 class of stock, the total number of shares of stock which the corporation shall have authority to issue and the par value of each of such shares, or a statement that all such shares are to be without par value. If the corporation is to be authorized to issue more than 1 class of stock, the certificate of incorporation shall set forth the total number of shares of all classes of stock which the corporation shall have authority to issue and the number of shares of each class and shall specify each class the shares of which are to be without par value and each class the shares of which are to have par value and the par value of the shares of each such class. The certificate of incorporation shall also set forth a statement of the designations and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof, which are permitted by § 151 of this title in respect of any class or classes of stock or any series of any class of stock of the corporation and the fixing of which by the certificate of incorporation is desired, and an express grant of such authority as it may then be desired to grant to the board of directors to fix by resolution or resolutions any thereof that may be desired but which shall not be fixed by the certificate of incorporation. The foregoing provisions of this paragraph shall not apply to nonstock corporations. In the case of nonstock corporations, the fact that they are not authorized to issue capital stock shall be stated in the certificate of incorporation. The conditions of membership, or other criteria for identifying members, of nonstock corporations shall likewise be stated in the certificate of incorporation or the bylaws. Nonstock corporations shall have members, but failure to have members shall not affect otherwise valid corporate acts or work a forfeiture or dissolution of the corporation. Nonstock corporations may provide for classes or groups of members having relative rights, powers and duties, and may make provision for the future creation of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members. Except as otherwise provided in this chapter, nonstock corporations may also provide that any member or class or group of members shall have full, limited, or no voting rights or powers, including that any member or class or group of members shall have the right to vote on a specified transaction even if that member or class or group of members does not have the right to vote for the election of the members of the governing body of the corporation. Voting by members of a nonstock corporation may be on a per capita, number, financial interest, class, group, or any other basis set forth. The provisions referred to in the 3 preceding sentences may be set forth in the certificate of incorporation or the bylaws. If neither the certificate of incorporation nor the bylaws of a nonstock corporation state the conditions of membership, or other criteria for identifying members, the members of the corporation shall be deemed to be those entitled to vote for the election of the members of the governing body pursuant to the certificate of incorporation or bylaws of such corporation or otherwise until thereafter otherwise provided by the certificate of incorporation or the bylaws;

**(5)** The name and mailing address of the incorporator or incorporators;

**(6)** If the powers of the incorporator or incorporators are to terminate upon the filing of the certificate of incorporation, the names and mailing addresses of the persons who are to serve as directors until the first annual meeting of stockholders or until their successors are elected and qualify.

**(b)** In addition to the matters required to be set forth in the certificate of incorporation by subsection (a) of this section, the certificate of incorporation may also contain any or all of the following matters:

**(1)** Any provision for the management of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the powers of the corporation, the directors, and the stockholders, or any class of the stockholders, or the governing body, members, or any class or group of members of a nonstock corporation; if such provisions are not contrary to the laws of this State. Any provision which is required or permitted by any section of this chapter to be stated in the bylaws may instead be stated in the certificate of incorporation;

**(2)** The following provisions, in haec verba,

**(i),** for a corporation other than a nonstock corporation, viz: "Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this corporation under § 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under § 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation"; or

**(ii),** for a nonstock corporation, viz: "Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its members or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or member thereof or on the application of any receiver or receivers appointed for this corporation under § 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under § 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the members or class of members of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three fourths in value of the creditors or class of creditors, and/or of the members or class of members of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the members or class of members, of this corporation, as the case may be, and also on this corporation";

**(3)** Such provisions as may be desired granting to the holders of the stock of the corporation, or the holders of any class or series of a class thereof, the preemptive right to subscribe to any or all additional issues of stock of the corporation of any or all classes or series thereof, or to any securities of the corporation convertible into such stock. No stockholder shall have any preemptive right to subscribe to an additional issue of stock or to any security convertible into such stock unless, and except to the extent that, such right is expressly granted to such stockholder in the certificate of incorporation. All such rights in existence on July 3, 1967, shall remain in existence unaffected by this paragraph unless and until changed or terminated by appropriate action which expressly provides for the change or termination;

**(4)** Provisions requiring for any corporate action, the vote of a larger portion of the stock or of any class or series thereof, or of any other securities having voting power, or a larger number of the directors, than is required by this chapter;

**(5)** A provision limiting the duration of the corporation's existence to a specified date; otherwise, the corporation shall have perpetual existence;

**(6)** A provision imposing personal liability for the debts of the corporation on its stockholders to a specified extent and upon specified conditions; otherwise, the stockholders of a corporation shall not be personally liable for the payment of the corporation's debts except as they may be liable by reason of their own conduct or acts;

**(7)** A provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director:

**(i)** For any breach of the director's duty of loyalty to the corporation or its stockholders;

**(ii)** for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

**(iii)** under § 174 of this title; or

**(iv)** for any transaction from which the director derived an improper personal benefit.

No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective. All references in this paragraph to a director shall also be deemed to refer to such other person or persons, if any, who, pursuant to a provision of the certificate of incorporation in accordance with § 141(a) of this title, exercise or perform any of the powers or duties otherwise conferred or imposed upon the board of directors by this title.

**(c)** It shall not be necessary to set forth in the certificate of incorporation any of the powers conferred on corporations by this chapter.

**(d)** Except for provisions included pursuant to paragraphs (a)(1), (a)(2), (a)(5), (a)(6), (b)(2), (b)(5), (b)(7) of this section, and provisions included pursuant to paragraph (a)(4) of this section specifying the classes, number of shares, and par value of shares a corporation other than a nonstock corporation is authorized to issue, any provision of the certificate of incorporation may be made dependent upon facts ascertainable outside such instrument, provided that the manner in which such facts shall operate upon the provision is clearly and explicitly set forth therein. The term "facts," as used in this subsection, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

**(e)** The exclusive right to the use of a name that is available for use by a domestic or foreign corporation may be reserved by or on behalf of:

**(1)** Any person intending to incorporate or organize a corporation with that name under this chapter or contemplating such incorporation or organization;

**(2)** Any domestic corporation or any foreign corporation qualified to do business in the State of Delaware, in either case, intending to change its name or contemplating such a change;

**(3)** Any foreign corporation intending to qualify to do business in the State of Delaware and adopt that name or contemplating such qualification and adoption; and

**(4)** Any person intending to organize a foreign corporation and have it qualify to do business in the State of Delaware and adopt that name or contemplating such organization, qualification and adoption. The reservation of a specified name may be made by filing with the Secretary of State an application, executed by the applicant, certifying that the reservation is made by or on behalf of a domestic corporation, foreign corporation or other person described in paragraphs (e)(1)-(4) of this section above, and specifying the name to be reserved and the name and address of the applicant. If the Secretary of State finds that the name is available for use by a domestic or foreign corporation, the Secretary shall reserve the name for the use of the applicant for a period of 120 days. The same applicant may renew for successive 120-day periods a reservation of a specified name by filing with the Secretary of State, prior to the expiration of such reservation (or renewal thereof), an application for renewal of such reservation, executed by the applicant, certifying that the reservation is renewed by or on behalf of a domestic corporation, foreign corporation or other person described in paragraphs (e)(1)-(4) of this section above and specifying the name reservation to be renewed and the name and address of the applicant. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved, specifying the name reservation to be transferred and the name and address of the transferee. The reservation of a specified name may be cancelled by filing with the Secretary of State a notice of cancellation, executed by the applicant or transferee, specifying the name reservation to be cancelled and the name and address of the applicant or transferee. Unless the Secretary of State finds that any application, application for renewal, notice of transfer, or notice of cancellation filed with the Secretary of State as required by this subsection does not conform to law, upon receipt of all filing fees required by law the Secretary of State shall prepare and return to the person who filed such instrument a copy of the filed instrument with a notation thereon of the action taken by the Secretary of State. A fee as set forth in § 391 of this title shall be paid at the time of the reservation of any name, at the time of the renewal of any such reservation and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

**(f)** The certificate of incorporation may not contain any provision that would impose liability on a stockholder for the attorneys' fees or expenses of the corporation or any other party in connection with an internal corporate claim, as defined in § 115 of this title.

**Section 106. Commencement of Corporate Existence**

Upon the filing with the Secretary of State of the certificate of incorporation, executed and acknowledged in accordance with § 103 of this title, the incorporator or incorporators who signed the certificate, and such incorporator's or incorporators' successors and assigns, shall, from the date of such filing, be and constitute a body corporate, by the name set forth in the certificate, subject to § 103(d) of this title and subject to dissolution or other termination of its existence as provided in this chapter.

**Section 107. Power of Incorporators**

If the persons who are to serve as directors until the first annual meeting of stockholders have not been named in the certificate of incorporation, the incorporator or incorporators, until the directors are elected, shall manage the affairs of the corporation and may do whatever is necessary and proper to perfect the organization of the corporation, including the adoption of the original bylaws of the corporation and the election of directors.

**Section 108. Organization meeting of incorporators or directors named in certificate of incorporation**

**(a)** After the filing of the certificate of incorporation an organization meeting of the incorporator or incorporators, or of the board of directors if the initial directors were named in the certificate of incorporation, shall be held, either within or without this State, at the call of a majority of the incorporators or directors, as the case may be, for the purposes of adopting bylaws, electing directors (if the meeting is of the incorporators) to serve or hold office until the first annual meeting of stockholders or until their successors are elected and qualify, electing officers if the meeting is of the directors, doing any other or further acts to perfect the organization of the corporation, and transacting such other business as may come before the meeting.

**(b)** The persons calling the meeting shall give to each other incorporator or director, as the case may be, at least 2 days' written notice thereof by any usual means of communication, which notice shall state the time, place and purposes of the meeting as fixed by the persons calling it. Notice of the meeting need not be given to anyone who attends the meeting or who signs a waiver of notice either before or after the meeting.

**(c)** Any action permitted to be taken at the organization meeting of the incorporators or directors, as the case may be, may be taken without a meeting if each incorporator or director, where there is more than 1, or the sole incorporator or director where there is only 1, signs an instrument which states the action so taken.

**(d)** If any incorporator is not available to act, then any person for whom or on whose behalf the incorporator was acting directly or indirectly as employee or agent, may take any action that such incorporator would have been authorized to take under this section or § 107 of this title; provided that any instrument signed by such other person, or any record of the proceedings of a meeting in which such person participated, shall state that such incorporator is not available and the reason therefor, that such incorporator was acting directly or indirectly as employee or agent for or on behalf of such person, and that such person's signature on such instrument or participation in such meeting is otherwise authorized and not wrongful.

**Section 109. Bylaws**

**(a)** The original or other bylaws of a corporation may be adopted, amended or repealed by the incorporators, by the initial directors of a corporation other than a nonstock corporation or initial members of the governing body of a nonstock corporation if they were named in the certificate of incorporation, or, before a corporation other than a nonstock corporation has received any payment for any of its stock, by its board of directors. After a corporation other than a nonstock corporation has received any payment for any of its stock, the power to adopt, amend or repeal bylaws shall be in the stockholders entitled to vote. In the case of a nonstock corporation, the power to adopt, amend or repeal bylaws shall be in its members entitled to vote. Notwithstanding the foregoing, any corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors or, in the case of a nonstock corporation, upon its governing body. The fact that such power has been so conferred upon the directors or governing body, as the case may be, shall not divest the stockholders or members of the power, nor limit their power to adopt, amend or repeal bylaws.

**(b)** The bylaws may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees. The bylaws may not contain any provision that would impose liability on a stockholder for the attorneys' fees or expenses of the corporation or any other party in connection with an internal corporate claim, as defined in § 115 of this title.

**Section 115. Forum Selection provisions**

The certificate of incorporation or the bylaws may require, consistent with applicable jurisdictional requirements, that any or all internal corporate claims shall be brought solely and exclusively in any or all of the courts in this State, and no provision of the certificate of

incorporation or the bylaws may prohibit bringing such claims in the courts of this State. "Internal corporate claims" means claims, including claims in the right of the corporation, (i) that are based upon a violation of a duty by a current or former director or officer or stockholder in such capacity, or (ii) as to which this title confers jurisdiction upon the Court of Chancery.

**Section 121. General powers**

**(a)** In addition to the powers enumerated in § 122 of this title, every corporation, its officers, directors and stockholders shall possess and may exercise all the powers and privileges granted by this chapter or by any other law or by its certificate of incorporation, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business or purposes set forth in its certificate of incorporation.

**(b)** Every corporation shall be governed by the provisions and be subject to the restrictions and liabilities contained in this chapter.

**Section 122. Specific powers**

Every corporation created under this chapter shall have power to:

(1) Have perpetual succession by its corporate name, unless a limited period of duration is stated in its certificate of incorporation;

(2) Sue and be sued in all courts and participate, as a party or otherwise, in any judicial, administrative, arbitrative or other proceeding, in its corporate name;

(3) Have a corporate seal, which may be altered at pleasure, and use the same by causing it or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;

**(4)** Purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated, and to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, all or any of its property and assets, or any interest therein, wherever situated;

**(5)** Appoint such officers and agents as the business of the corporation requires and to pay or otherwise provide for them suitable compensation;

**(6)** Adopt, amend and repeal bylaws;

**(7)** Wind up and dissolve itself in the manner provided in this chapter;

**(8)** Conduct its business, carry on its operations and have offices and exercise its powers within or without this State;

**(9)** Make donations for the public welfare or for charitable, scientific or educational purposes, and in time of war or other national emergency in aid thereof;

**(10)** Be an incorporator, promoter or manager of other corporations of any type or kind;

**(11)** Participate with others in any corporation, partnership, limited partnership, joint venture or other association of any kind, or in any transaction, undertaking or arrangement which the participating corporation would have power to conduct by itself, whether or not such participation involves sharing or delegation of control with or to others;

**(12)** Transact any lawful business which the corporation's board of directors shall find to be in aid of governmental authority;

**(13)** Make contracts, including contracts of guaranty and suretyship, incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage, pledge or other encumbrance of all or 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) a corporation all of the outstanding stock of which is owned, directly or indirectly, by the contracting corporation, or (b) a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation, or (c) a corporation all of the outstanding stock of which is owned, directly or indirectly, by a corporation which owns, directly or indirectly, all 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;

**(14)** Lend money for its corporate purposes, invest and reinvest its funds, and take, hold and deal with real and personal property as security for the payment of funds so loaned or invested;

**(15)** Pay pensions and establish and carry out pension, profit sharing, stock option, stock purchase, stock bonus, retirement, benefit, incentive and compensation plans, trusts and provisions for any or all of its directors, officers and employees, and for any or all of the directors, officers and employees of its subsidiaries;

**(16)** Provide insurance for its benefit on the life of any of its directors, officers or employees, or on the life of any stockholder for the purpose of acquiring at such stockholder's death shares of its stock owned by such stockholder

**(17)** Renounce, in its certificate of incorporation or by action of its board of directors, any interest or expectancy of the corporation in, or in being offered an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the corporation or 1 or more of its officers, directors or stockholders.

**Section 141. Board of directors**

**(a)** The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation. If any such provision is made in the certificate of incorporation, the powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the certificate of incorporation.

**(b)** The board of directors of a corporation shall consist of 1 or more members, each of whom shall be a natural person. The number of directors shall be fixed by, or in the manner provided in, the bylaws, unless the certificate of incorporation fixes the number of directors, in which case a change in the number of directors shall be made only by amendment of the certificate. Directors need not be stockholders unless so required by the certificate of incorporation or the bylaws. The certificate of incorporation or bylaws may prescribe other qualifications for directors. Each director shall hold office until such director's successor is elected and qualified or until such director's earlier resignation or removal. Any director may resign at any time upon notice given in writing or by electronic transmission to the corporation. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. A majority of the total number of directors shall constitute a quorum for the transaction of business unless the certificate of incorporation or the bylaws require a greater number. Unless the certificate of incorporation provides otherwise, the bylaws may provide that a number less than a majority shall constitute a quorum which in no case shall be less than 1/3 of the total number of directors. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the certificate of incorporation or the bylaws shall require a vote of a greater number.

**(c)**

**(1)** All corporations incorporated prior to July 1, 1996, shall be governed by this paragraph (c)(1) of this section, provided that any such corporation may by a resolution adopted by a majority of the whole board elect to be governed by paragraph (c)(2) of this section, in which case this paragraph (c)(1) of this section shall not apply to such corporation. All corporations incorporated on or after July 1, 1996, shall be governed by paragraph (c)(2) of this section. The board of directors may, by resolution passed by a majority of the whole board, designate 1 or more committees, each committee to consist of 1 or more of the directors of the corporation. The board may designate 1 or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The bylaws may provide that in the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not the member or members present constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the certificate of incorporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the board of directors as provided in § 151(a) of this title, fix the designations and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation or fix the number of shares of any series of stock or authorize the increase or decrease of the shares of any series), adopting an agreement of merger or consolidation under § 251, § 252, § 254, § 255, § 256, § 257, § 258, § 263 or § 264 of this title, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution, or amending the bylaws of the corporation; and, unless the resolution, bylaws or certificate of incorporation expressly so provides, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock or to adopt a certificate of ownership and merger pursuant to § 253 of this title.

**(2)** The board of directors may designate 1 or more committees, each committee to consist of 1 or more of the directors of the corporation. The board may designate 1 or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The bylaws may provide that in the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matter: (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by this chapter to be submitted to stockholders for approval or (ii) adopting, amending or repealing any bylaw of the corporation.

**(3)** Unless otherwise provided in the certificate of incorporation, the bylaws or the resolution of the board of directors designating the committee, a committee may create 1 or more subcommittees, each subcommittee to consist of 1 or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee. Except for references to committees and members of committees in subsection (c) of this section, every reference in this chapter to a committee of the board of directors or a member of a committee shall be deemed to include a reference to a subcommittee or member of a subcommittee.

**(4)** A majority of the directors then serving on a committee of the board of directors or on a subcommittee of a committee shall constitute a quorum for the transaction of business by the committee or subcommittee, unless the certificate of incorporation, the bylaws, a resolution of the board of directors or a resolution of a committee that created the subcommittee requires a greater or lesser number, provided that in no case shall a quorum be less than 1/3 of the directors then serving on the committee or subcommittee. The vote of the majority of the members of a committee or subcommittee present at a meeting at which a quorum is present shall be the act of the committee or subcommittee, unless the certificate of incorporation, the bylaws, a resolution of the board of directors or a resolution of a committee that created the subcommittee requires a greater number.

**(d)** The directors of any corporation organized under this chapter may, by the certificate of incorporation or by an initial bylaw, or by a bylaw adopted by a vote of the stockholders, be divided into 1, 2 or 3 classes; the term of office of those of the first class to expire at the first annual meeting held after such classification becomes effective; of the second class 1 year thereafter; of the third class 2 years thereafter; and at each annual election held after such classification becomes effective, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire. The certificate of incorporation or bylaw provision dividing the directors into classes may authorize the board of directors to assign members of the board already in office to such classes at the time such classification becomes effective. The certificate of incorporation may confer upon holders of any class or series of stock the right to elect 1 or more directors who shall serve for such term, and have such voting powers as shall be stated in the certificate of incorporation. The terms of office and voting powers of the directors elected separately by the holders of any class or series of stock may be greater than or less than those of any other director or class of directors. In addition, the certificate of incorporation may confer upon 1 or more directors, whether or not elected separately by the holders of any class or series of stock, voting powers greater than or less than those of other directors. Any such provision conferring greater or lesser voting power shall apply to voting in any committee, unless otherwise provided in the certificate of incorporation or bylaws. If the certificate of incorporation provides that 1 or more directors shall have more or less than 1 vote per director on any matter, every reference in this chapter to a majority or other proportion of the directors shall refer to a majority or other proportion of the votes of the directors.

**(e)** A member of the board of directors, or a member of any committee designated by the board of directors, shall, in the performance of such member's duties, be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of the corporation's officers or employees, or committees of the board of directors, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the corporation.

**(f)** Unless otherwise restricted by the certificate of incorporation or bylaws, any action required or permitted to be taken at any meeting of the board of directors or of any committee thereof may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing, or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the board, or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made and such consent shall be deemed to have been given for purposes of this subsection at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

**(g)** Unless otherwise restricted by the certificate of incorporation or bylaws, the board of directors of any corporation organized under this chapter may hold its meetings, and have an office or offices, outside of this State.

**(h)** Unless otherwise restricted by the certificate of incorporation or bylaws, the board of directors shall have the authority to fix the compensation of directors.

**(i)** Unless otherwise restricted by the certificate of incorporation or bylaws, members of the board of directors of any corporation, or any committee designated by the board, may participate in a meeting of such board, or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting.

**(j)** The certificate of incorporation of any nonstock corporation may provide that less than 1/3 of the members of the governing body may constitute a quorum thereof and may otherwise provide that the business and affairs of the corporation shall be managed in a manner different from that provided in this section. Except as may be otherwise provided by the certificate of incorporation, this section shall apply to such a corporation, and when so applied, all references to the board of directors, to members thereof, and to stockholders shall be deemed to refer to the governing body of the corporation, the members thereof and the members of the corporation, respectively; and all references to stock, capital stock, or shares thereof shall be deemed to refer to memberships of a nonprofit nonstock corporation and to membership interests of any other nonstock corporation.

**(k)** Any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except as follows:

**(1)** Unless the certificate of incorporation otherwise provides, in the case of a corporation whose board is classified as provided in subsection (d) of this section, stockholders may effect such removal only for cause; or

**(2)** In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no director may be removed without cause if the votes cast against such director's removal would be sufficient to elect such director if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which such director is a part.

Whenever the holders of any class or series are entitled to elect 1 or more directors by the certificate of incorporation, this subsection shall apply, in respect to the removal without cause of a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole.

**Section 142. Officers**

**(a)** Every corporation organized under this chapter shall have such officers with such titles and duties as shall be stated in the bylaws or in a resolution of the board of directors which is not inconsistent with the bylaws and as may be necessary to enable it to sign instruments and stock certificates which comply with §§ 103(a)(2) and 158 of this title. One of the officers shall have the duty to record the proceedings of the meetings of the stockholders and directors in a book to be kept for that purpose. Any number of offices may be held by the same person unless the certificate of incorporation or bylaws otherwise provide.

**(b)** Officers shall be chosen in such manner and shall hold their offices for such terms as are prescribed by the bylaws or determined by the board of directors or other governing body. Each officer shall hold office until such officer's successor is elected and qualified or until such officer's earlier resignation or removal. Any officer may resign at any time upon written notice to the corporation.

**(c)** The corporation may secure the fidelity of any or all of its officers or agents by bond or otherwise.

**(d)** A failure to elect officers shall not dissolve or otherwise affect the corporation.

**(e)** Any vacancy occurring in any office of the corporation by death, resignation, removal or otherwise, shall be filled as the bylaws provide. In the absence of such provision, the vacancy shall be filled by the board of directors or other governing body.

**Section 144. Interested directors; quorum**

**(a)** No contract or transaction between a corporation and 1 or more of its directors or officers, or between a corporation and any other corporation, partnership, association, or other organization in which 1 or more of its directors or officers, are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board or committee which authorizes the contract or transaction, or solely because any such director's or officer's votes are counted for such purpose, if:

**(1)** The material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or

**(2)** The material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

**(3)** The contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified, by the board of directors, a committee or the stockholders.

**(b)** Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes the contract or transaction.

**Section 145. Indemnification of officers, directors, employees, and agents**

**(a**) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) 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 (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person 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 the person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, 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 the person 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 reasonable cause to believe that the person's conduct was unlawful.

**(b)** A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit 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 (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

**(c)**To the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of this section, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

**(d)** Any indemnification under subsections (a) and (b) of this section (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in subsections (a) and (b) of this section. Such determination shall be made, with respect to a person who is a director or officer of the corporation at the time of such determination:

**(1)** By a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum; or

**(2)** By a committee of such directors designated by majority vote of such directors, even though less than a quorum; or

**(3)** If there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion; or

**(4)** By the stockholders.

**(e)** Expenses (including attorneys' fees) incurred by an officer or director of the corporation in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in this section. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents of the corporation or by persons serving at the request of the corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the corporation deems appropriate.

**(f)** The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. A right to indemnification or to advancement of expenses arising under a provision of the certificate of incorporation or a bylaw shall not be eliminated or impaired by an amendment to the certificate of incorporation or the bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.

**(g)**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 such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under this section.

**(h)** For purposes of this section, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this section with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

**(i)** For purposes of this section, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this section.

**(j)** The indemnification and advancement of expenses provided by, or granted pursuant to, this section shall, unless otherwise provided when authorized or ratified, continue as 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.

**(k)** The Court of Chancery is hereby vested with exclusive jurisdiction to hear and determine all actions for advancement of expenses or indemnification brought under this section or under any bylaw, agreement, vote of stockholders or disinterested directors, or otherwise. The Court of Chancery may summarily determine a corporation's obligation to advance expenses (including attorneys' fees).

**Section 151. Classes of Stock**

**(a)** Every corporation may issue 1 or more classes of stock or 1 or more series of stock within any class thereof, any or all of which classes may be of stock with par value or stock without par value and which classes or series may have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the certificate of incorporation or of any amendment thereto, or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its certificate of incorporation. Any of the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of any such class or series of stock may be made dependent upon facts ascertainable outside the certificate of incorporation or of any amendment thereto, or outside the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by its certificate of incorporation, provided that the manner in which such

facts shall operate upon the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of such class or series of stock is clearly and expressly set forth in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors. The term "facts," as used in this subsection, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation. The power to increase or decrease or otherwise adjust the capital stock as provided in this chapter shall apply to all or any such classes of stock.

**(b)** Any stock of any class or series may be made subject to redemption by the corporation at its option or at the option of the holders of such stock or upon the happening of a specified event; provided however, that immediately following any such redemption the corporation shall have outstanding 1 or more shares of 1 or more classes or series of stock, which share, or shares together, shall have full voting powers. Notwithstanding the limitation stated in the foregoing proviso:

**(1)** Any stock of a regulated investment company registered under the Investment Company Act of 1940 [15 U.S.C. § 80 a-1 et seq.], as heretofore or hereafter amended, may be made subject to redemption by the corporation at its option or at the option of the holders of such stock.

**(2)** Any stock of a corporation which holds (directly or indirectly) a license or franchise from a governmental agency to conduct its business or is a member of a national securities exchange, which license, franchise or membership is conditioned upon some or all of the holders of its stock possessing prescribed qualifications, may be made subject to redemption by the corporation to the extent necessary to prevent the loss of such license, franchise or membership or to reinstate it. Any stock which may be made redeemable under this section may be redeemed for cash, property or rights, including securities of the same or another corporation, at such time or times, price or prices, or rate or rates, and with such adjustments, as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to subsection (a) of this section.

**(c)** The holders of preferred or special stock of any class or of any series thereof shall be entitled to receive dividends at such rates, on such conditions and at such times as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided, payable in preference to, or in such relation to, the dividends payable on any other class or classes or of any other series of stock, and cumulative or noncumulative as shall be so stated and expressed.

**(d)** The holders of the preferred or special stock of any class or of any series thereof shall be entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the corporation as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

**(e)** Any stock of any class or of any series thereof may be made convertible into, or exchangeable for, at the option of either the holder or the corporation or upon the happening of a specified event, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation, at such price or prices or at such rate or rates of exchange and with such adjustments as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

**(f)** If any corporation shall be authorized to issue more than 1 class of stock or more than 1 series of any class, the powers, designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in § 202 of this title, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the registered owner thereof shall be given a notice, in writing or by electronic transmission, containing the information required to be set forth or stated on certificates pursuant to this section or § 156, § 202(a), § 218(a) or § 364 of this title or with respect to this section a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

**(g)** When any corporation desires to issue any shares of stock of any class or of any series of any class of which the powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, if any, shall not have been set forth in the certificate of incorporation or in any amendment thereto but shall be provided for in a resolution or resolutions adopted by the board of directors pursuant to authority expressly vested in it by the certificate of incorporation or any amendment thereto, a certificate of designations setting forth a copy of such resolution or resolutions and the number of shares of stock of such class or series as to which the resolution or resolutions apply shall be executed, acknowledged, filed and shall become effective, in accordance with § 103 of this title. Unless otherwise provided in any such resolution or resolutions, the number of shares of stock of any such series to which such resolution or resolutions apply may be increased (but not above the total number of authorized shares of the class) or decreased (but not below the number of shares thereof then outstanding) by a certificate likewise executed, acknowledged and filed setting forth a statement that a specified increase or decrease therein had been authorized and directed by a resolution or resolutions likewise adopted by the board of directors. In case the number of such shares shall be decreased the number of shares so specified in the certificate shall resume the status which they had prior to the adoption of the first resolution or resolutions. When no shares of any such class or series are outstanding, either because none were issued or because no issued shares of any such class or series remain outstanding, a certificate setting forth a resolution or resolutions adopted by the board of directors that none of the authorized shares of such class or series are outstanding, and that none will be issued subject to the certificate of designations previously filed with respect to such class or series, may be executed, acknowledged and filed in accordance with § 103 of this title and, when such certificate becomes effective, it shall have the effect of eliminating from the certificate of incorporation all matters set forth in the certificate of designations with respect to such class or series of stock. Unless otherwise provided in the certificate of incorporation, if no shares of stock have been issued of a class or series of stock established by a resolution of the board of directors, the voting powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, may be amended by a resolution or resolutions adopted by the board of directors. A certificate which:

**(1)** States that no shares of the class or series have been issued;

**(2)** Sets forth a copy of the resolution or resolutions; and

**(3)** If the designation of the class or series is being changed, indicates the original designation and the new designation, shall be executed, acknowledged and filed and shall become effective, in accordance with § 103 of this title. When any certificate filed under this subsection becomes effective, it shall have the effect of amending the certificate of incorporation; except that neither the filing of such certificate nor the filing of a restated certificate of incorporation pursuant to § 245 of this title shall prohibit the board of directors from subsequently adopting such resolutions as authorized by this subsection.

**Section 161. Issuance of additional stock**

The directors may, at any time and from time to time, if all of the shares of capital stock which the corporation is authorized by its certificate of incorporation to issue have not been issued, subscribed for, or otherwise committed to be issued, issue or take subscriptions for additional shares of its capital stock up to the amount authorized in its certificate of incorporation.

**Section 170. Dividends**

**(a)** The directors of every corporation, subject to any restrictions contained in its certificate of incorporation, may declare and pay dividends upon the shares of its capital stock either:

**(1)** Out of its surplus, as defined in and computed in accordance with §§ 154 and 244 of this title; or

**(2)** In case there shall be no such surplus, out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year.

If the capital of the corporation, computed in accordance with §§ 154 and 244 of this title, shall have been diminished by depreciation in the value of its property, or by losses, or otherwise, to an amount less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets, the directors of such corporation shall not declare and pay out of such net profits any dividends upon any shares of any classes of its capital stock until the deficiency in the amount of capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets shall have been repaired. Nothing in this subsection shall invalidate or otherwise affect a note, debenture or other obligation of the corporation paid by it as a dividend on shares of its stock, or any payment made thereon, if at the time such note, debenture or obligation was delivered by the corporation, the corporation had either surplus or net profits as provided in (a)(1) or (2) of this section from which the dividend could lawfully have been paid.

**(b)** Subject to any restrictions contained in its certificate of incorporation, the directors of any corporation engaged in the exploitation of wasting assets (including but not limited to a corporation engaged in the exploitation of natural resources or other wasting assets, including patents, or engaged primarily in the liquidation of specific assets) may determine the net profits derived from the exploitation of such wasting assets or the net proceeds derived from such liquidation without taking into consideration the depletion of such assets resulting from lapse of time, consumption, liquidation or exploitation of such assets.

**Section 202. Restrictions on Transfer and Ownership of securities.**

**(a)** A written restriction or restrictions on the transfer or registration of transfer of a security of a corporation, or on the amount of the corporation's securities that may be owned by any person or group of persons, if permitted by this section and noted conspicuously on the certificate or certificates representing the security or securities so restricted or, in the case of uncertificated shares, contained in the notice or notices given pursuant to § 151(f) of this title, may be enforced against the holder of the restricted security or securities or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the certificate or certificates representing the security or securities so restricted or, in the case of uncertificated shares, contained in the notice or notices given pursuant to § 151(f) of this title, a restriction, even though permitted by this section, is ineffective except against a person with actual knowledge of the restriction.

**(b)** A restriction on the transfer or registration of transfer of securities of a corporation, or on the amount of a corporation's securities that may be owned by any person or group of persons, may be imposed by the certificate of incorporation or by the bylaws or by an agreement among any number of security holders or among such holders and the corporation. No restrictions so imposed shall be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to an agreement or voted in favor of the restriction.

**(c)**A restriction on the transfer or registration of transfer of securities of a corporation or on the amount of such securities that may be owned by any person or group of persons is permitted by this section if it:

**(1)**Obligates the holder of the restricted securities to offer to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing, a prior opportunity, to be exercised within a reasonable time, to acquire the restricted securities; or

**(2)**Obligates the corporation or any holder of securities of the corporation or any other person or any combination of the foregoing, to purchase the securities which are the subject of an agreement respecting the purchase and sale of the restricted securities; or

**(3)**Requires the corporation or the holders of any class or series of securities of the corporation to consent to any proposed transfer of the restricted securities or to approve the proposed transferee of the restricted securities, or to approve the amount of securities of the corporation that may be owned by any person or group of persons; or

**(4)**Obligates the holder of the restricted securities to sell or transfer an amount of restricted securities to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing, or causes or results in the automatic sale or transfer of an amount of restricted securities to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing; or

**(5)**Prohibits or restricts the transfer of the restricted securities to, or the ownership of restricted securities by, designated persons or classes of persons or groups of persons, and such designation is not manifestly unreasonable.

**(d)** Any restriction on the transfer or the registration of transfer of the securities of a corporation, or on the amount of securities of a corporation that may be owned by a person or group of persons, for any of the following purposes shall be conclusively presumed to be for a reasonable purpose:

**(1)** Maintaining any local, state, federal or foreign tax advantage to the corporation or its stockholders, including without limitation:

**a.** Maintaining the corporation's status as an electing small business corporation under subchapter S of the United States Internal Revenue Code [26 U.S.C. § 1371 et seq.], or

**b.** Maintaining or preserving any tax attribute (including without limitation net operating losses), or

**c.** Qualifying or maintaining the qualification of the corporation as a real estate investment trust pursuant to the United States Internal Revenue Code or regulations adopted pursuant to the United States Internal Revenue Code, or

**(2)** Maintaining any statutory or regulatory advantage or complying with any statutory or regulatory requirements under applicable local, state, federal or foreign law.

**(e)** Any other lawful restriction on transfer or registration of transfer of securities, or on the amount of securities that may be owned by any person or group of persons, is permitted by this section.

**Section 211. Meetings of Stockholders.**

**(a)**

**(1)** Meetings of stockholders may be held at such place, either within or without this State as may be designated by or in the manner provided in the certificate of incorporation or bylaws, or if not so designated, as determined by the board of directors. If, pursuant to this paragraph or the certificate of incorporation or the bylaws of the corporation, the board of directors is authorized to determine the place of a meeting of stockholders, the board of directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by paragraph (a)(2) of this section.

**(2)** If authorized by the board of directors in its sole discretion, and subject to such guidelines and procedures as the board of directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication:

**a.** Participate in a meeting of stockholders; and

**b.** Be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that

**(i)** the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder,

**(ii**) the corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

**(b)** Unless directors are elected by written consent in lieu of an annual meeting as permitted by this subsection, an annual meeting of stockholders shall be held for the election of directors on a date and at a time designated by or in the manner provided in the bylaws. Stockholders may, unless the certificate of incorporation otherwise provides, act by written consent to elect directors; provided, however, that, if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action. Any other proper business may be transacted at the annual meeting.

**(c)** A failure to hold the annual meeting at the designated time or to elect a sufficient number of directors to conduct the business of the corporation shall not affect otherwise valid corporate acts or work a forfeiture or dissolution of the corporation except as may be otherwise specifically provided in this chapter. If the annual meeting for election of directors is not held on the date designated therefor or action by written consent to elect directors in lieu of an annual meeting has not been taken, the directors shall cause the meeting to be held as soon as is convenient. If there be a failure to hold the annual meeting or to take action by written consent to elect directors in lieu of an annual meeting for a period of 30 days after the date designated for the annual meeting, or if no date has been designated, for a period of 13 months after the latest to occur of the organization of the corporation, its last annual meeting or the last action by written consent to elect directors in lieu of an annual meeting, the Court of Chancery may summarily order a meeting to be held upon the application of any stockholder or director. The shares of stock represented at such meeting, either in person or by proxy, and entitled to vote thereat, shall constitute a quorum for the purpose of such meeting, notwithstanding any provision of the certificate of incorporation or bylaws to the contrary. The Court of Chancery may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of such meeting, the record date or dates for determination of stockholders entitled to notice of the meeting and to vote thereat, and the form of notice of such meeting.

**(d)** Special meetings of the stockholders may be called by the board of directors or by such person or persons as may be authorized by the certificate of incorporation or by the bylaws.

**(e)** All elections of directors shall be by written ballot unless otherwise provided in the certificate of incorporation; if authorized by the board of directors, such requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission, provided

that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxy holder.

**Section 212. Voting Rights of Stockholders**

**(a)** Unless otherwise provided in the certificate of incorporation and subject to § 213 of this title, each stockholder shall be entitled to 1 vote for each share of capital stock held by such stockholder. If the certificate of incorporation provides for more or less than 1 vote for any share, on any matter, every reference in this chapter to a majority or other proportion of stock, voting stock or shares shall refer to such majority or other proportion of the votes of such stock, voting stock or shares.

**(b)** Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after 3 years from its date, unless the proxy provides for a longer period.

**(c)** Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy pursuant to subsection (b) of this section, the following shall constitute a valid means by which a stockholder may grant such authority:

**(1)** A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature.

**(2)** A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information upon which they relied.

**(d)** Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to subsection (c) of this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

**(e)** A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally.

**Section 213. Fixing Date for Determination of Stockholders of Record.**

**(a)** In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the board of directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the board of directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the board of directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the foregoing provisions of this subsection (a) at the adjourned meeting.

**(b)** In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the board of directors is required by this chapter, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in this State, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the board of directors and prior action by the board of directors is required by this chapter, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the board of directors adopts the resolution taking such prior action.

**(c)** In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

**Section 216. Quorum and required vote for stock corporations**

Subject to this chapter in respect of the vote that shall be required for a specified action, the certificate of incorporation or bylaws of any corporation authorized to issue stock may specify the number of shares and/or the amount of other securities having voting power the holders of which shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business, but in no event shall a quorum consist of less than 1/3 of the shares entitled to vote at the meeting, except that, where a separate vote by a class or series or classes or series is required, a quorum shall consist of no less than 1/3 of the shares of such class or series or classes or series. In the absence of such specification in the certificate of incorporation or bylaws of the corporation:

**(1)** A majority of the shares entitled to vote, present in person or represented by proxy, shall constitute a quorum at a meeting of stockholders;

**(2)** In all matters other than the election of directors, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders;

**(3)** Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors; and

**(4)** Where a separate vote by a class or series or classes or series is required, a majority of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and, in all matters other than the election of directors, the affirmative vote of the majority of shares of such class or series or classes or series present in person or represented by proxy at the meeting shall be the act of such class or series or classes or series.

A bylaw amendment adopted by stockholders which specifies the votes that shall be necessary for the election of directors shall not be further amended or repealed by the board of directors.

**Section 218. Voting Agreements**

**(a)** One stockholder or 2 or more stockholders may by agreement in writing deposit capital stock of an original issue with or transfer capital stock to any person or persons, or entity or entities authorized to act as trustee, for the purpose of vesting in such person or persons,

entity or entities, who may be designated voting trustee, or voting trustees, the right to vote thereon for any period of time determined by such agreement, upon the terms and conditions stated in such agreement. The agreement may contain any other lawful provisions not inconsistent with such purpose. After delivery of a copy of the agreement to the registered office of the corporation in this State or the principal place of business of the corporation, which copy shall be open to the inspection of any stockholder of the corporation or any beneficiary of the trust under the agreement daily during business hours, certificates of stock or uncertificated stock shall be issued to the voting trustee or trustees to represent any stock of an original issue so deposited with such voting trustee or trustees, and any certificates of stock or uncertificated stock so transferred to the voting trustee or trustees shall be surrendered and cancelled and new certificates or uncertificated stock shall be issued therefore to the voting trustee or trustees. In the certificate so issued, if any, it shall be stated that it is issued pursuant to such agreement, and that fact shall also be stated in the stock ledger of the corporation. The voting trustee or trustees may vote the stock so issued or transferred during the period specified in the agreement. Stock standing in the name of the voting trustee or trustees may be voted either in person or by proxy, and in voting the stock, the voting trustee or trustees shall incur no responsibility as stockholder, trustee or otherwise, except for their own individual malfeasance. In any case where 2 or more persons or entities are designated as voting trustees, and the right and method of voting any stock standing in their names at any meeting of the corporation are not fixed by the agreement appointing the trustees, the right to vote the stock and the manner of voting it at the meeting shall be determined by a majority of the trustees, or if they be equally divided as to the right and manner of voting the stock in any particular case, the vote of the stock in such case shall be divided equally among the trustees.

**(b)** Any amendment to a voting trust agreement shall be made by a written agreement, a copy of which shall be delivered to the registered office of the corporation in this State or principal place of business of the corporation

**(c)** An agreement between 2 or more stockholders, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the shares held by them shall be voted as provided by the agreement, or as the parties may agree, or as determined in accordance with a procedure agreed upon by them.

**(d)** This section shall not be deemed to invalidate any voting or other agreement among stockholders or any irrevocable proxy which is not otherwise illegal.

**Section 220. Inspection of books and records**

**(a)** As used in this section:

**(1)** "Stockholder" means a holder of record of stock in a stock corporation, or a person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person.

**(2)** "Subsidiary" means any entity directly or indirectly owned, in whole or in part, by the corporation of which the stockholder is a stockholder and over the affairs of which the corporation directly or indirectly exercises control, and includes, without limitation, corporations, partnerships, limited partnerships, limited liability partnerships, limited liability companies, statutory trusts and/or joint ventures.

**(3)** "Under oath" includes statements the declarant affirms to be true under penalty of perjury under the laws of the United States or any state.

**(b)** Any stockholder, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose, and to make copies and extracts from:

**(1)** The corporation's stock ledger, a list of its stockholders, and its other books and records; and

**(2)** A subsidiary's books and records, to the extent that:

**a.** The corporation has actual possession and control of such records of such subsidiary; or

**b.** The corporation could obtain such records through the exercise of control over such subsidiary, provided that as of the date of the making of the demand:

**1.** The stockholder inspection of such books and records of the subsidiary would not constitute a breach of an agreement between the corporation or the subsidiary and a person or persons not affiliated with the corporation; and

**2.** The subsidiary would not have the right under the law applicable to it to deny the corporation access to such books and records upon demand by the corporation.

In every instance where the stockholder is other than a record holder of stock in a stock corporation, or a member of a nonstock corporation, the demand under oath shall state the person's status as a stockholder, be accompanied by documentary evidence of beneficial ownership of the stock, and state that such documentary evidence is a true and correct copy of what it purports to be. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in this State or at its principal place of business.

**(c)** If the corporation, or an officer or agent thereof, refuses to permit an inspection sought by a stockholder or attorney or other agent acting for the stockholder pursuant to subsection (b) of this section or does not reply to the demand within 5 business days after the demand has been made, the stockholder may apply to the Court of Chancery for an order to compel such inspection. The Court of Chancery is hereby vested with exclusive jurisdiction to determine whether or not the person seeking inspection is entitled to the inspection sought. The Court may summarily order the corporation to permit the stockholder to inspect the corporation's stock ledger, an existing list of stockholders, and its other books and records, and to make copies or extracts therefrom; or the Court may order the corporation to furnish to the stockholder a list of its stockholders as of a specific date on condition that the stockholder first pay to the corporation the reasonable cost of obtaining and furnishing such list and on such other conditions as the Court deems appropriate. Where the stockholder seeks to inspect the corporation's books and records, other than its stock ledger or list of stockholders, such stockholder shall first establish that:

**(1)** Such stockholder is a stockholder;

**(2)** Such stockholder has complied with this section respecting the form and manner of making demand for inspection of such documents; and

**(3)** The inspection such stockholder seeks is for a proper purpose.

Where the stockholder seeks to inspect the corporation's stock ledger or list of stockholders and establishes that such stockholder is a stockholder and has complied with this section respecting the form and manner of making demand for inspection of such documents, the burden of proof shall be upon the corporation to establish that the inspection such stockholder seeks is for an improper purpose. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other or further relief as the Court may deem just and proper. The Court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within this State and kept in this State upon such terms and conditions as the order may prescribe.

**(d)** Any director shall have the right to examine the corporation's stock ledger, a list of its stockholders and its other books and records for a purpose reasonably related to the director's position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger and the list of stockholders and to make copies or extracts therefrom. The burden of proof shall be upon the corporation to establish that the inspection such director seeks is for an improper purpose. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

**Section 225. Contested election of directors; proceedings to determine validity.**

**(a)** Upon application of any stockholder or director, or any officer whose title to office is contested, the Court of Chancery may hear and determine the validity of any election, appointment, removal or resignation of any director or officer of any corporation, and the right of any person to hold or continue to hold such office, and, in case any such office is claimed by more than 1 person, may determine the person entitled thereto; and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the corporation relating to the issue. In case it should be determined that no valid election has been held, the Court of Chancery may order an election to be held in accordance with § 211 or § 215 of this title. In any such application, service of copies of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation and upon the person whose title to office is contested and upon the person, if any, claiming such office; and the registered agent shall forward immediately a copy of the application to the corporation and to the person whose title to office is contested and to the person, if any, claiming such office, in a postpaid, sealed, registered letter addressed to such corporation and such person at their post office addresses last known to the registered agent or furnished to the registered agent by the applicant stockholder. The Court may make such order respecting further or other notice of such application as it deems proper under the circumstances.

**(b)** Upon application of any stockholder or upon application of the corporation itself, the Court of Chancery may hear and determine the result of any vote of stockholders upon matters other than the election of directors or officers. Service of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation, and no other party need be joined in order for the Court to adjudicate the result of the vote. The Court may make such order respecting notice of the application as it deems proper under the circumstances.

**(c)** If 1 or more directors has been convicted of a felony in connection with the duties of such director or directors to the corporation, or if there has been a prior judgment on the merits by a court of competent jurisdiction that 1 or more directors has committed a breach of the duty of loyalty in connection with the duties of such director or directors to that corporation, then, upon application by the corporation, or derivatively in the right of the corporation by any stockholder, in a subsequent action brought for such purpose, the Court of Chancery may remove from office such director or directors if the Court determines that the director or directors did not act in good faith in performing the acts resulting in the prior conviction or judgment and judicial removal is necessary to avoid irreparable harm to the corporation. In connection with such removal, the Court may make such orders as are necessary to effect such removal. In any such application, service of copies of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation and upon the director or directors whose removal is sought; and the registered agent shall forward immediately a copy of the application to the corporation and to such director or directors, in a postpaid, sealed, registered letter addressed to such corporation and such director or directors at their post office addresses last known to the registered agent or furnished to the registered agent by the applicant. The Court may make such order respecting further or other notice of such application as it deems proper under the circumstances.

**Section 228. Consent of Stockholders or Members in Liew of Meeting.**

**(a)** Unless otherwise provided in the certificate of incorporation, any action required by this chapter to be taken at any annual or special meeting of stockholders of a corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in this State, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

**(b)** Unless otherwise provided in the certificate of incorporation, any action required by this chapter to be taken at a meeting of the members of a nonstock corporation, or any action which may be taken at any meeting of the members of a nonstock corporation, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members having a right to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in this State, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of members are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

**(c)** No written consent shall be effective to take the corporate action referred to therein unless written consents signed by a sufficient number of holders or members to take action are delivered to the corporation in the manner required by this section within 60 days of the first date on which a written consent is so delivered to the corporation. Any person executing a consent may provide, whether through instruction to an agent or otherwise, that such a consent will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made, if evidence of such instruction or provision is provided to the corporation. Unless otherwise provided, any such consent shall be revocable prior to its becoming effective.

**(d)**

**(1)** A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder, member or proxyholder, or by a person or persons authorized to act for a stockholder, member or proxyholder, shall be deemed to be written and signed for the purposes of this section, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the corporation can determine

**(A)** that the telegram, cablegram or other electronic transmission was transmitted by the stockholder, member or proxyholder or by a person or persons authorized to act for the stockholder, member or proxyholder and

**(B)** the date on which such stockholder, member or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the corporation by delivery to its registered office in this State, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders or members are recorded. Delivery made to a corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission, may be otherwise delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders or members are recorded if, to the extent and in the manner provided by resolution of the board of directors or governing body of the corporation.

**(2)** Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

**(e)** Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders or members who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that written consents signed by a sufficient number of holders or members to take the action were delivered to the corporation as provided in this section. In the event that the action which is consented to is such as would have required the filing of a certificate under any other section of this title, if such action had been voted on by stockholders or by members at a meeting thereof, the certificate filed under such other section shall state, in lieu of any statement required by such section concerning any vote of stockholders or members, that written consent has been given in accordance with this section.

**Section 242—Amendment of certificate of incorporation after receipt of payment for stock; nonstock corporations**

**(a)** After a corporation has received payment for any of its capital stock, or after a nonstock corporation has members, it may amend its certificate of incorporation, from time to time, in any and as many respects as may be desired, so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of the filing of the amendment; and, if a change in stock or the rights of stockholders, or an exchange, reclassification, subdivision, combination or cancellation of stock or rights of stockholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, subdivision, combination or cancellation. In particular, and without limitation upon such general power of amendment, a corporation may amend its certificate of incorporation, from time to time, so as:

**(1)** To change its corporate name; or

**(2)** To change, substitute, enlarge or diminish the nature of its business or its corporate powers and purposes; or

**(3)** To increase or decrease its authorized capital stock or to reclassify the same, by changing the number, par value, designations, preferences, or relative, participating, optional, or other special rights of the shares, or the qualifications, limitations or restrictions of such rights, or by changing shares with par value into shares without par value, or shares without par value into shares with par value either with or without increasing or decreasing the number of shares, or by subdividing or combining the outstanding shares of any class or series of a class of shares into a greater or lesser number of outstanding shares; or

**(4)** To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared; or

**(5)** To create new classes of stock having rights and preferences either prior and superior or subordinate and inferior to the stock of any class then authorized, whether issued or unissued; or

**(6)** To change the period of its duration; or

**(7)** To delete:

**a.** Such provisions of the original certificate of incorporation which named the incorporator or incorporators, the initial board of directors and the original subscribers for shares; and

**b.** Such provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation of stock, if such change, exchange, reclassification, subdivision, combination or cancellation has become effective.

Any or all such changes or alterations may be effected by 1 certificate of amendment.

**(b)** Every amendment authorized by subsection (a) of this section shall be made and effected in the following manner:

**(1)** If the corporation has capital stock, its board of directors shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and either calling a special meeting of the stockholders entitled to vote in respect thereof for the consideration of such amendment or directing that the amendment proposed be considered at the next annual meeting of the stockholders; provided, however, that unless otherwise expressly required by the certificate of incorporation, no meeting or vote of stockholders shall be required to adopt an amendment that effects only changes described in paragraph (a)(1) or (7) of this section. Such special or annual meeting shall be called and held upon notice in accordance with § 222 of this title. The notice shall set forth such amendment in full or a brief summary of the changes to be effected thereby unless such notice constitutes a notice of internet availability of proxy materials under the rules promulgated under the Securities Exchange Act of 1934 [15 U.S.C. § 78a et seq.]. At the meeting a vote of the stockholders entitled to vote thereon shall be taken for and against any proposed amendment that requires adoption by stockholders. If no vote of stockholders is required to effect such amendment, or if a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class has been voted in favor of the amendment, a certificate setting forth the amendment and certifying that such amendment has been duly adopted in accordance with this section shall be executed, acknowledged and filed and shall become effective in accordance with § 103 of this title.

**(2)** The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the certificate of incorporation, if the amendment would increase or decrease the aggregate number of

authorized shares of such class, increase or decrease the par value of the shares of such class, or alter or change the powers, preferences, or special rights of the shares of such class so as to affect them adversely. If any proposed amendment would alter or change the powers, preferences, or special rights of 1 or more series of any class so as to affect them adversely, but shall not so affect the entire class, then only the shares of the series so affected by the amendment shall be considered a separate class for the purposes of this paragraph. The number of authorized shares of any such class or classes of stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the corporation entitled to vote irrespective of this subsection, if so provided in the original certificate of incorporation, in any amendment thereto which created such class or classes of stock or which was adopted prior to the issuance of any shares of such class or classes of stock, or in any amendment thereto which was authorized by a resolution or resolutions adopted by the affirmative vote of the holders of a majority of such class or classes of stock.

**(3)** If the corporation is a nonstock corporation, then the governing body thereof shall adopt a resolution setting forth the amendment proposed and declaring its advisability. If a majority of all the members of the governing body shall vote in favor of such amendment, a certificate thereof shall be executed, acknowledged and filed and shall become effective in accordance with § 103 of this title. The certificate of incorporation of any nonstock corporation may contain a provision requiring any amendment thereto to be approved by a specified number or percentage of the members or of any specified class of members of such corporation in which event such proposed amendment shall be submitted to the members or to any specified class of members of such corporation in the same manner, so far as applicable, as is provided in this section for an amendment to the certificate of incorporation of a stock corporation; and in the event of the adoption thereof by such members, a certificate evidencing such amendment shall be executed, acknowledged and filed and shall become effective in accordance with § 103 of this title.

**(4)**Whenever the certificate of incorporation shall require for action by the board of directors of a corporation other than a nonstock corporation or by the governing body of a nonstock corporation, by the holders of any class or series of shares or by the members, or by the holders of any other securities having voting power the vote of a greater number or proportion than is required by any section of this title, the provision of the certificate of incorporation requiring such greater vote shall not be altered, amended or repealed except by such greater vote.

**(c)** The resolution authorizing a proposed amendment to the certificate of incorporation may provide that at any time prior to the effectiveness of the filing of the amendment with the Secretary of State, notwithstanding authorization of the proposed amendment by the stockholders of the corporation or by the members of a nonstock corporation, the board of directors or governing body may abandon such proposed amendment without further action by the stockholders or members.

**Section 275 Dissolution generally; procedure.**

**(a)**If it should be deemed advisable in the judgment of the board of directors of any corporation that it should be dissolved, the board, after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, shall cause notice of the adoption of the resolution and of a meeting of stockholders to take action upon the resolution to be mailed to each stockholder entitled to vote thereon as of the record date for determining the stockholders entitled to notice of the meeting.

**(b)**At the meeting a vote shall be taken upon the proposed dissolution. If a majority of the outstanding stock of the corporation entitled to vote thereon shall vote for the proposed dissolution, a certification of dissolution shall be filed with the Secretary of State pursuant to subsection (d) of this section.

**(c)**Dissolution of a corporation may also be authorized without action of the directors if all the stockholders entitled to vote thereon shall consent in writing and a certificate of dissolution shall be filed with the Secretary of State pursuant to subsection (d) of this section.

**(d)**If dissolution is authorized in accordance with this section, a certificate of dissolution shall be executed, acknowledged and filed, and shall become effective, in accordance with § 103 of this title. Such certificate of dissolution shall set forth:

**(1)**The name of the corporation;

**(2)**The date dissolution was authorized;

**(3)**That the dissolution has been authorized by the board of directors and stockholders of the corporation, in accordance with subsections (a) and (b) of this section, or that the dissolution has been authorized by all of the stockholders of the corporation entitled to vote on a dissolution, in accordance with subsection (c) of this section;

**(4)**The names and addresses of the directors and officers of the corporation; and

**(5)**The date of filing of the corporation's original certificate of incorporation with the Secretary of State.

**(e)**The resolution authorizing a proposed dissolution may provide that notwithstanding authorization or consent to the proposed dissolution by the stockholders, or the members of a nonstock corporation pursuant to § 276 of this title, the board of directors or governing body may abandon such proposed dissolution without further action by the stockholders or members.

**(f)**Upon a certificate of dissolution becoming effective in accordance with § 103 of this title, the corporation shall be dissolved.

**Section 342. Close corporation defined; contents of certificate of incorporation**

**(a)** A close corporation is a corporation organized under this chapter whose certificate of incorporation contains the provisions required by § 102 of this title and, in addition, provides that:

**(1)** All of the corporation's issued stock of all classes, exclusive of treasury shares, shall be represented by certificates and shall be held of record by not more than a specified number of persons, not exceeding 30; and

**(2)** All of the issued stock of all classes shall be subject to 1 or more of the restrictions on transfer permitted by § 202 of this title; and

**(3)** The corporation shall make no offering of any of its stock of any class which would constitute a “public offering” within the meaning of the United States Securities Act of 1933 [15 U.S.C. § 77a et seq.] as it may be amended from time to time.

**(b)** The certificate of incorporation of a close corporation may set forth the qualifications of stockholders, either by specifying classes of persons who shall be entitled to be holders of record of stock of any class, or by specifying classes of persons who shall not be entitled to be holders of stock of any class or both.

**(c)** For purposes of determining the number of holders of record of the stock of a close corporation, stock which is held in joint or common tenancy or by the entireties shall be treated as held by 1 stockholder.

**Section 343. Formation of a close corporation.**

A close corporation shall be formed in accordance with §§ 101, 102 and 103 of this title, except that:

**(1)** Its certificate of incorporation shall contain a heading stating the name of the corporation and that it is a close corporation; and

**(2)** Its certificate of incorporation shall contain the provisions required by § 342 of this title.

**Section 344. Election of existing corporation to become a close corporation**

Any corporation organized under this chapter may become a close corporation under this subchapter by executing, acknowledging and filing, in accordance with § 103 of this title, a certificate of amendment of its certificate of incorporation which shall contain a statement

that it elects to become a close corporation, the provisions required by § 342 of this title to appear in the certificate of incorporation of a close corporation, and a heading stating the name of the corporation and that it is a close corporation. Such amendment shall be adopted in accordance with the requirements of § 241 or 242 of this title, except that it must be approved by a vote of the holders of record of at least 2/3 of the shares of each class of stock of the corporation which are outstanding.

**Section 350. Agreements restricting discretion of directors**

A written agreement among the stockholders of a close corporation holding a majority of the outstanding stock entitled to vote, whether solely among themselves or with a party not a stockholder, is not invalid, as between the parties to the agreement, on the ground that it so relates to the conduct of the business and affairs of the corporation as to restrict or interfere with the discretion or powers of the board of directors. The effect of any such agreement shall be to relieve the directors and impose upon the stockholders who are parties to the agreement the liability for managerial acts or omissions which is imposed on directors to the extent and so long as the discretion or powers of the board in its management of corporate affairs is controlled by such agreement.

**Section 362. Public benefit corporation defined; contents of certificate of incorporation**

**(a)** A "public benefit corporation" is a for-profit corporation organized under and subject to the requirements of this chapter that is intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner. To that end, a public benefit corporation shall be managed in a manner that balances the stockholders' pecuniary interests, the best interests of those materially affected by the corporation's conduct, and the public benefit or public benefits identified in its certificate of incorporation. In the certificate of incorporation, a public benefit corporation shall:

**(1)** Identify within its statement of business or purpose pursuant to § 102(a)(3) of this title 1 or more specific public benefits to be promoted by the corporation; and

**(2)** State within its heading that it is a public benefit corporation.

**(b)** "Public benefit" means a positive effect (or reduction of negative effects) on 1 or more categories of persons, entities, communities or interests (other than stockholders in their capacities as stockholders) including, but not limited to, effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature. "Public benefit provisions" means the provisions of a certificate of incorporation contemplated by this subchapter.

**(c)** The name of the public benefit corporation may contain the words "public benefit corporation," or the abbreviation "P.B.C.," or the designation "PBC," which shall be deemed to satisfy the requirements of § 102(a)(l)(i) of this title. If the name does not contain such language, the corporation shall, prior to issuing unissued shares of stock or disposing of treasury shares, provide notice to any person to whom such stock is issued or who acquires such treasury shares that it is a public benefit corporation; provided that such notice need not be provided if the issuance or disposal is pursuant to an offering registered under the Securities Act of 1933 [15 U.S.C. § 77r et seq.] or if, at the time of issuance or disposal, the corporation has a class of securities that is registered under the Securities Exchange Act of 1934 [15 U.S.C. § 78a et seq.].

**Section 365. Duties of directors**

**(a)** The board of directors shall manage or direct the business and affairs of the public benefit corporation in a manner that balances the pecuniary interests of the stockholders, the best interests of those materially affected by the corporation's conduct, and the specific public benefit or public benefits identified in its certificate of incorporation.

**(b)** A director of a public benefit corporation shall not, by virtue of the public benefit provisions or § 362(a) of this title, have any duty to any person on account of any interest of such person in the public benefit or public benefits identified in the certificate of incorporation or on account of any interest materially affected by the corporation's conduct and, with respect to a decision implicating the balance requirement in subsection (a) of this section, will be deemed to satisfy such director's fiduciary duties to stockholders and the corporation if such director's decision is both informed and disinterested and not such that no person of ordinary, sound judgment would approve.

**(c)** The certificate of incorporation of a public benefit corporation may include a provision that any disinterested failure to satisfy this section shall not, for the purposes of § 102(b)(7) or § 145 of this title, constitute an act or omission not in good faith, or a breach of the duty of loyalty.

# Virginia Stock Corporation Act

**Section 671.1. Shareholder Agreements.**

**A.** An agreement among the shareholders of a corporation 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 in that it:

**1.** Eliminates the board of directors or, subject to the requirements of subsection D of § 13.1-647 and subsection A of § 13.1-693, one or more officers or restricts the discretion or powers of the board of directors;

**2.** Governs the authorization or making of distributions, regardless of whether they are in proportion to ownership of shares, subject to the limitations in § 13.1-653;

**3.** Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

**4.** Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

**5.** 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 or among any of them;

**6.** Transfers to one or more shareholders or other persons all or part of the 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;

**7.** 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; or

**8.** Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them, and is not contrary to public policy.

**B.** An agreement authorized by this section shall be:

**1.** As set forth (i) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement or (ii) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation; and

**2.** Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise.

**C.** 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 subsection B of § 13.1-648. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding 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 before the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of 90 days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

**D.** An agreement authorized by this section shall cease to be effective when the corporation becomes a public corporation. 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 of the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

**E.** 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.

**F.** 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.

**G.** 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.

**H.** No action taken pursuant to this section shall change any requirement to file articles or other documents with the Commission or affect the rights of any creditors or other third parties.

**I.** Limits, if any, on the duration of an agreement authorized by this section shall be as set forth in the agreement, except that the duration of an agreement that became effective prior to July 1, 2015, remains 10 years unless the agreement provided otherwise or is subsequently amended to provide otherwise.

**J.** An agreement among shareholders of a corporation that is consistent with the other provisions of this chapter that does not comply with the provisions of this section shall nonetheless be effective among the shareholders and the corporation.

**Section 13.1-690—General standards of conduct for director.**

**(A)** A director shall discharge his duties as a director, including his duties as a member of a committee, in accordance with his good faith business judgment of the best interests of the corporation.

**(B)** Unless a director has knowledge or information concerning the matter in question that makes reliance unwarranted, the director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

**(1)** One or more officers or employees of the corporation whom the director believes, in good faith, to be reliable and competent in the matters presented;

**(2)** Legal counsel, public accountants, or other persons as to matters the director believes, in good faith, are within the person's professional or expert competence; or

**(3)** A committee of the board of directors of which he is not a member if the director believes, in good faith, that the committee merits confidence.

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

**(D)** A person alleging a violation of this section has the burden of proving the violation.

**Section 13.1-691—Director conflict of interests.**

**(A)** A conflict of interests transaction is a transaction with the corporation in which a director of the corporation has an interest that precludes the director from being a disinterested director. A conflict of interests transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

**(1)** The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction;

**(2)** The material facts of the transaction and the director's interest were disclosed to the shareholders entitled to vote and they authorized, approved, or ratified the transaction; or

**(3)** The transaction was fair to the corporation.

**(B)** For purposes of subdivision A 1, a conflict of interests transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the disinterested directors on the board of directors, or on the committee. A transaction shall not be authorized, approved, or ratified under this section by a single director. If a majority of the disinterested directors 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 who is not disinterested does not affect the validity of any action taken under subdivision A 1 if the transaction is otherwise authorized, approved or ratified as provided in that subsection.

**(C)** For purposes of subdivision A 2, a conflict of interests 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 is not disinterested may not be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interests transaction under subdivision A 2. The vote of those shares, however, shall be counted in determining whether the transaction is approved under other sections of this chapter. 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.

**Section 13.1-692.1—Limitation on liability of officers and directors; exception**

**(A)** In any proceeding brought by or in the right of a corporation or brought by or on behalf of shareholders of the corporation, the damages assessed against an officer or director arising out of a single transaction, occurrence or course of conduct shall not exceed the lesser of:

**(1)** The monetary amount, including the elimination of liability, specified in the articles of incorporation or, if approved by the shareholders, in the bylaws as a limitation on or elimination of the liability of the officer or director; or

**(2)** The greater of (i) $100,000 or (ii) the amount of cash compensation received by the officer or director from the corporation during the 12 months immediately preceding the act or omission for which liability was imposed.

**(B)** The liability of an officer or director shall not be limited as provided in this section if the officer or director engaged in willful misconduct or a knowing violation of the criminal law or of any federal or state securities law, including, without limitation, any claim of unlawful insider trading or manipulation of the market for any security.

# Model Business Corporation Act

**Section 2.02—Articles of Incorporation**

**(a)** The articles of incorporation must set forth:

**(1)** a corporate name for the corporation that satisfies the requirements of section 4.01;

**(2)** the number of shares the corporation is authorized to issue;

**(3)** the street and mailing addresses of the corporation’s initial registered office and the name of its initial registered agent at that office; and

**(4)** the name and address of each incorporator.

**(b)** The articles of incorporation may set forth:

**(1)** the names and addresses of the individuals who are to serve as the initial directors;

**(2)** provisions not inconsistent with law regarding:

**(i)** the purpose or purposes for which the corporation is organized;

**(ii)** managing the business and regulating the affairs of the corporation;

**(iii)** defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

**(iv)** a par value for authorized shares or classes of shares; or

**(v)** the imposition of interest holder liability on shareholders;

**(3)** any provision that under this Act is required or permitted to be set forth in the bylaws;

**(4)** a provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for

**(i)** the amount of a financial benefit received by a director to which the director is not entitled;

**(ii)** an intentional infliction of harm on the corporation or the shareholders;

**(iii)** a violation of section 8.32; or

**(iv)** an intentional violation of criminal law;

**(5)** a provision permitting or making obligatory indemnification of a director for liability as defined in section 8.50 to any person for any action taken, or any failure to take any action, as a director, except liability for

**(i)** receipt of a financial benefit to which the director is not entitled,

**(ii)** an intentional infliction of harm on the corporation or its shareholders, (iii) a violation of section 8.32, or (iv) an intentional violation of criminal law; and

**(6)** a provision limiting or eliminating any duty of a director or any other person to offer the corporation the right to have or participate in any, or one or more classes or categories of, business opportunities, before the pursuit or taking of the opportunity by the director or other person; provided that any application of such a provision to an officer or a related person of that officer

**(i)** also requires approval of that application by the board of directors, subsequent to the effective date of the provision, by action of qualified directors taken in compliance with the same procedures as are set forth in section 8.62, and

**(ii)** may be limited by the authorizing action of the board.

**(c)** The articles of incorporation need not set forth any of the corporate powers enumerated in this Act.

**(d)** Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with section 1.20(k).

**(e)** As used in this section, “related person” has the meaning specified in section 8.60.

**Section 2.06—Bylaws**

**(a)** The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

**(b)** The bylaws of a corporation may contain any provision that is not inconsistent with law or

the articles of incorporation.

**(c)** The bylaws may contain one or both of the following provisions:

**(1)** a requirement that if the corporation solicits proxies or consents with respect to an election of directors, the corporation include in its proxy statement and any form of its proxy or consent, to the extent and subject to such procedures or conditions as are provided in the bylaws, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors; and

**(2)** a requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting proxies or consents in connection with an election of directors, to the extent and subject to such procedures and conditions as are provided in the bylaws, provided that no bylaw so adopted shall apply to elections for which any record date precedes its adoption.

**(d)** Notwithstanding section 10.20(b)(2), the shareholders in amending, repealing, or adopting a bylaw described in subsection § 2.06(c) may not limit the authority of the board of directors to amend or repeal any condition or procedure set forth in or to add any procedure or condition to such a bylaw to provide for a reasonable, practical, and orderly process.

**Section 7.01—Annual Meeting**

**(a)** Unless directors are elected by written consent in lieu of an annual meeting as permitted by section 7.04, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws at which directors shall be elected.

**(b)** Annual meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is so stated or fixed, annual meetings shall be held at the corporation’s principal office.

**(c)** The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation’s bylaws does not affect the validity of any corporate action.

**Section 7.02—Special Meeting**

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

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

**(2)** if shareholders holding at least 10% of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held, provided that the articles of incorporation may fix a lower percentage or a higher percentage not exceeding 25% of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation before the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

**(b)** If not otherwise fixed under section 7.03 or 7.07, the record date for determining shareholders entitled to demand a special meeting shall be the first date on which a signed shareholder demand is delivered to the corporation. No written demand for a special meeting shall be effective unless, within 60 days of the earliest date on which such a demand delivered to the corporation as required by this section was signed, written demands signed by shareholders holding at least the percentage of votes specified in or fixed in accordance with subsection § 7.02(a)(2) have been delivered to the corporation.

**(c)** Special meetings of shareholders may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is so stated or fixed, special meetings shall be held at the corporation’s principal office.

**(d)** Only business within the purpose or purposes described in the meeting notice required by

section 7.05(c) may be conducted at a special meeting of shareholders.

**Section 7.32—Shareholder Agreements**

**(a)** An agreement among the shareholders of a corporation 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 Act in that it:

**(1)** eliminates the board of directors or restricts the discretion or powers of the board of directors;

**(2)** governs the authorization or making of distributions, regardless of whether they are in proportion to ownership of shares, subject to the limitations in section 6.40;

**(3)** establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

**(4)** governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

**(5)** 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 or among any of them;

**(6)** transfers to one or more shareholders or other persons all or part of the 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;

**(7)** 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; or

**(8)** otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them, and is not contrary to public policy.

**(b)** An agreement authorized by this section shall be:

**(1)** as set forth (i) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement, or (ii) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation; and

**(2)** subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise.

**(c)** 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 section 6.26(b). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding 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 before the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection shall be commenced within the earlier of 90 days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

**(d)** 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.

**(e)** 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.

**(f)** 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.

**(g)** 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.

**(h)** Limits, if any, on the duration of an agreement authorized by this section must be set forth in the agreement. An agreement that became effective when this Act provided for a 10-year limit on duration of shareholder agreements, unless the agreement provided otherwise, remains governed by the provisions of this section concerning duration then in effect.

**Section 8.01—Requirement for and Functions of Board of Directors**

**(a)** Except as may be provided in an agreement authorized under section 7.32, each corporation shall have a board of directors.

**(b)** Except as may be provided in an agreement authorized under section 7.32, and subject to any limitation in the articles of incorporation permitted by section 2.02(b), all corporate powers shall be exercised by or under the authority of the board of directors, and the business and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of the board of directors.

**Section 8.30—Standards of Conduct for Directors**

**(a)** Each member of the board of directors, when discharging the duties of a director, shall act:

**(i)** in good faith, and

**(ii)** in a manner the director reasonably believes to be in the best interests of the corporation.

**(b)** The members of the board of directors or a board committee, when becoming informed in connection with their decision-making function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

**(c)** In discharging board or board committee duties, a director shall disclose, or cause to be disclosed, to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decision-making or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

**(d)** In discharging board or board committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in subsection (f)(1) or subsection (f)(3) to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board’s functions that are delegable under applicable law.

**(e)** In discharging board or board committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (f).

**(f)** A director is entitled to rely, in accordance with subsection (d) or (e), on:

**(1)** one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;

**(2)** legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters

**(i)** within the particular person’s professional or expert competence, or

**(ii)** as to which the particular person merits confidence; or

**(3)** a board committee of which the director is not a member if the director reasonably believes the committee merits confidence.

**Section 8.31—Standards of Liability for Directors**

**(a)** A director shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes that:

**(1)** no defense interposed by the director based on (i) any provision in the articles of incorporation authorized by section 2.02(b)(4) or by section 2.02(b)(6), (ii) the protection afforded by section 8.61 (for action taken in compliance with section 8.62 or section 8.63), or (iii) the protection afforded by section 8.70, precludes liability; and

**(2)** the challenged conduct consisted or was the result of:

**(i)** action not in good faith; or

**(ii)** a decision

**(A)** which the director did not reasonably believe to be in the best interests of the corporation, or

**(B)** as to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or

**(iii)** a lack of objectivity due to the director’s familial, financial or business relationship with, or a lack of independence due to the director’s domination or control by, another person having a material interest in the challenged conduct,

**(A)** which relationship or which domination or control could reasonably be expected to have affected the director’s judgment respecting the challenged conduct in a manner adverse to the corporation, and

**(B)** after a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation; or

**(iv)** a sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation, or a failure to devote timely attention, by making (or causing to be made) appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need for such inquiry; or

**(v)** receipt of a financial benefit to which the director was not entitled or any other breach of the director’s duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

**(b)** The party seeking to hold the director liable:

**(1)** for money damages, shall also have the burden of establishing that:

**(i)** harm to the corporation or its shareholders has been suffered, and

**(ii)** the harm suffered was proximately caused by the director’s challenged conduct; or

**(2)** for other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

**(3)** for other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

**(c)** Nothing contained in this section shall (i) in any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under section 8.61(b)(3), alter the burden of proving the fact or lack of fairness otherwise applicable, (ii) alter the fact or lack of liability of a director under another section of this Act, such as the provisions governing the consequences of an unlawful distribution under section 8.32 or a transactional interest under section 8.61, or (iii) affect any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States.

**Section 10.20—Authority to Amend**

**(a)** A corporation’s shareholders may amend or repeal the corporation’s bylaws.

**(b)** A corporation’s board of directors may amend or repeal the corporation’s bylaws, unless:

**(1)** the articles of incorporation, section 10.21 or, if applicable, section 10.22 reserve that power exclusively to the shareholders in whole or part; or

**(2)** except as provided in section 2.06(d), the shareholders in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or adopt that bylaw.

**(c)** A shareholder of the corporation does not have a vested property right resulting from any provision in the bylaws.