

## Article 7.

### Members' Meetings and Voting; Derivative Proceedings.

#### Part 1. Meetings and Action Without Meetings.

##### **§ 55A-7-01. Annual and regular meetings.**

(a) A corporation having members with the right to vote for directors shall hold a meeting of such members annually.

(b) A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

(c) Annual and regular membership 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 stated in or fixed in accordance with the bylaws, annual and regular meetings shall be held at the corporation's principal office.

(d) At annual and regular meetings, the members shall consider and act upon such matters as may be raised consistent with the notice requirements of G.S. 55A-7-05 and G.S. 55A-7-22(d).

(e) The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with the corporation's bylaws does not affect the validity of any corporate action. (1955, c. 1230; 1993, c. 398, s. 1.)

##### **§ 55A-7-02. Special meeting.**

(a) A corporation with members shall hold a special meeting of members:

- (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) Within 30 days after the holders of at least ten percent (10%) of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(b) If not otherwise fixed under G.S. 55A-7-03 or G.S. 55A-7-07, the record date for determining members entitled to demand a special meeting is the date the first member signs the demand.

(c) Special meetings of members 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 stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(d) Only those matters that are within the purpose or purposes described in the meeting notice required by G.S. 55A-7-05 may be acted upon at a special meeting of members. (1955, c. 1230; 1993, c. 398, s. 1.)

##### **§ 55A-7-03. Court-ordered meeting.**

(a) The superior court of the county where a corporation's principal office, or, if there is none in this State, its registered office, is located may, after notice is given to the

corporation and upon such further notice and opportunity to be heard, if any, as the court may deem appropriate under the circumstances, summarily order a meeting to be held:

- (1) On application of any member if an annual meeting was not held within 15 months after the corporation's last annual meeting; or
- (2) On application of a member who signed a demand for a special meeting valid under G.S. 55A-7-02, if the corporation has not held the meeting as required by that section.

(b) The court may fix the time and place of the meeting, specify a record date for determining those persons entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(c) If the court orders a meeting, it may also order the corporation to pay all or part of the member's costs (including reasonable attorneys' fees) incurred to obtain the order. (1993, c. 398, s. 1.)

#### **§ 55A-7-04. Action by written consent.**

(a) Action required or permitted by this Chapter to be taken at a meeting of members may be taken without a meeting if the action is taken by all members entitled to vote on the action. The action shall be evidenced by one or more written consents describing the action taken, signed before or after such action by all members entitled to vote thereon, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise determined under G.S. 55A-7-03 or G.S. 55A-7-07, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (a) of this section.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document. (1977, c. 193, s. 2; 1993, c. 398, s. 1.)

#### **§ 55A-7-05. Notice of meeting.**

(a) A corporation shall give notice of meetings of members by any means that is fair and reasonable and consistent with its bylaws.

(b) Any notice that conforms to the requirements of subsection (c) is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered; provided, however, that notice of matters referred to in subdivision (c)(2) of this section shall be given as provided in subsection (c) of this section.

(c) Notice is fair and reasonable if:

- (1) The corporation gives notice to all members entitled to vote at the meeting of the place, date, and time of each annual, regular, and special meeting of members no fewer than 10, or, if notice is mailed by other

than first class, registered or certified mail, no fewer than 30, nor more than 60 days before the meeting date;

- (2) Notice of an annual or regular meeting includes a description of any matter or matters that shall be approved by the members under G.S. 55A-8-31, 55A-8-55, 55A-10-03, 55A-10-21, 55A-11-04, 55A-12-02, or 55A-14-02; and
- (3) Notice of special meeting includes a description of the matter or matters for which the meeting is called.

(d) Unless the bylaws require otherwise, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under G.S. 55A-7-07, however, notice of the adjourned meeting shall be given under this section to the members of record entitled to vote at the meeting as of the new record date.

(e) When giving notice of an annual, regular, or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if:

- (1) Requested in writing to do so by a person or persons entitled to call a special meeting pursuant to G.S. 55A-7-02; and
- (2) The request is received by the secretary or president of the corporation at least 10 days before the corporation gives notice of the meeting. (1955, c. 1230; 1993, c. 398, s. 1.)

#### **§ 55A-7-06. Waiver of notice.**

(a) A member may waive any notice required by this Chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver shall be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A member's attendance at a meeting:

- (1) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or conducting business at the meeting; and
- (2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter before it is voted upon. (1955, c. 1230; 1993, c. 398, s. 1.)

#### **§ 55A-7-07. Record date.**

(a) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing a record date, the board of directors may fix a future date as the record date. If no record date is fixed, members at the close of business on the business day preceding the day on which notice is given are entitled to notice of the meeting.

(b) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing a record date, the board of directors may fix a future date as the record date. If no record date is fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

(c) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing a record date, the board may fix in advance the record date. If no record date is fixed, members at the close of business on the day on which the board adopts the resolution relating to such action, or the 60th day prior to the date of such action, whichever is later, are entitled to such rights.

(d) A record date fixed under this section shall not be more than 70 days before the meeting or action for which a determination of members is required.

(e) A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(f) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting. (1993, c. 398, s. 1.)

#### **§ 55A-7-08. Action by written ballot.**

(a) Unless prohibited or limited by the articles of incorporation or bylaws and without regard to the requirements of G.S. 55A-7-04, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

(b) A written ballot shall:

- (1) Set forth each proposed action; and
- (2) Provide an opportunity to vote for or against each proposed action.

(c) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the same total number of votes were cast.

(d) All solicitations for votes by written ballot shall indicate the time by which a ballot shall be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles of incorporation or bylaws, a written ballot shall not be revoked. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 35; 1993, c. 398, s. 1.)

#### **§§ 55A-7-09 through 55A-7-19. Reserved for future codification purposes.**

## Part 2. Voting.

### **§ 55A-7-20. Members' list for meeting.**

(a) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list shall show the address and number of votes each member is entitled to cast at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. This list shall be prepared on the same basis as and be part of the list of members.

(b) Beginning two business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, the list of members shall be available at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held for inspection by any member for the purpose of communication with other members concerning the meeting. A member, personally or by or with his representatives, is entitled on written demand to inspect and, subject to the limitations of G.S. 55A-16-02(c) and G.S. 55A-16-05 and at his expense, to copy the list at a reasonable time during the period it is available for inspection.

(c) The corporation shall make the list of members available at the meeting, and any member, personally or by or with his representatives, is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a member or his representative to inspect or copy the list of members as permitted in subsections (b) and (c) of this section, the superior court of the county where a corporation's principal office (or, if there is none in this State, its registered office) is located, on application of the member, after notice is given to the corporation and upon such further evidence, notice and opportunity to be heard, if any, as the court may deem appropriate under the circumstances, may summarily order the inspection or copying at the corporation's expense. The court may postpone the meeting for which the list was prepared until the inspection or copying is complete and may order the corporation to pay the member's costs, including reasonable attorneys' fees, incurred to obtain the order.

(e) Refusal or failure to prepare or make available the members' list does not affect the validity of action taken at the meeting. (1993, c. 398, s. 1.)

### **§ 55A-7-21. Voting entitlement generally.**

(a) Unless the articles of incorporation or bylaws provide otherwise, each member is entitled to one vote on each matter voted on by the members.

(b) Unless the articles of incorporation or bylaws provide otherwise, if a membership stands of record in the names of two or more persons, their acts with respect to voting shall have the following effect:

- (1) If only one votes, such act binds all; and
- (2) If more than one votes, the vote shall be divided on a pro rata basis.

(c) An amendment to the articles of incorporation or bylaws on which members are entitled to vote, the purpose of which is to increase or decrease the number of votes any member is entitled to cast on any member action, shall be approved by the members entitled to vote on that action by a vote that would be sufficient to take the action before the amendment. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 35; 1993, c. 398, s. 1; 1995, c. 400, s. 2.)

**§ 55A-7-22. Quorum requirements.**

(a) Unless this Chapter, the articles of incorporation, or bylaws provide for a higher or lower quorum, ten percent (10%) of the votes entitled to be cast on a matter shall be represented at a meeting of members to constitute a quorum on that matter. Once a member is represented for any purpose at a meeting, the member is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(b) A bylaw amendment to decrease the quorum for any member action may be approved by the members entitled to vote on that action or, unless prohibited by the bylaws, by the board of directors.

(c) A bylaw amendment to increase the quorum required for any member action shall be approved by the members entitled to vote on that action.

(d) Unless one-third or more of the votes entitled to be cast in the election of directors are represented in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice. (1955, c. 1230; 1993, c. 398, s. 1.)

**§ 55A-7-23. Voting requirements.**

(a) Unless this Chapter, the articles of incorporation, or the bylaws require a greater vote or voting by class, if a quorum is present, the affirmative vote of a majority of the votes cast is the act of the members.

(b) An amendment to the articles of incorporation or bylaws on which members are entitled to vote, the purpose of which is to increase or decrease the vote required for any member action, shall be approved by the members entitled to vote on that action by a vote that would be sufficient to take the action before the amendment. (1955, c. 1230; 1993, c. 398, s. 1; 1995, c. 400, s. 3.)

**§ 55A-7-24. Proxies.**

(a) Unless the articles of incorporation or bylaws prohibit or limit proxy voting, a member may vote in person or by proxy. A member may appoint one or more proxies to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact. A photocopy, telegram, cablegram, facsimile transmission, or equivalent reproduction of a writing appointing one or more proxies, shall be deemed a valid appointment form within the meaning of this section. In addition, if and to the extent permitted by the nonprofit corporation, a member may appoint one or more proxies (i) by an electronic mail message or other form of electronic, wire, or wireless communication

that provides a written statement appearing to have been sent by the member, or (ii) by any kind of electronic or telephonic transmission, even if not accompanied by written communication, under circumstances or together with information from which the nonprofit corporation can reasonably assume that the appointment was made or authorized by the member.

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

(c) An appointment of a proxy is revocable by the member unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. An appointment made irrevocable under this subsection shall be revocable when the interest with which it is coupled is extinguished. A transferee for value of an interest subject to an irrevocable appointment may revoke the appointment if he did not have actual knowledge of its irrevocability.

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

(e) A revocable appointment of a proxy is revoked by the person appointing the proxy:

- (1) Attending any meeting and voting in person; or
- (2) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(f) Subject to G.S. 55A-7-27 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 35; 1993, c. 398, s. 1; 1999-139, s. 1.)

#### **§ 55A-7-25. Voting for directors; cumulative voting.**

(a) Unless otherwise provided in the articles of incorporation, the bylaws, or an agreement valid under G.S. 55A-7-30, directors are elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting at which a quorum is present. If the articles of incorporation, bylaws, or an agreement valid under G.S. 55A-7-30 provides for cumulative voting by members, members may so vote, by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote, and casting the product for a single candidate or distributing the product among two or more candidates.

(b) Members otherwise entitled to vote cumulatively shall not vote cumulatively at a particular meeting unless:

- (1) The meeting notice or statement accompanying the notice states that cumulative voting will take place; or

- (2) A member or proxy who has the right to cumulate his votes announces in open meeting, before voting for directors starts, his intention to vote cumulatively; and if such announcement is made, the chair shall declare that all persons entitled to vote have the right to vote cumulatively, shall announce the number of votes entitled to be cast, and shall grant a recess of not less than one hour nor more than four hours, as the chair shall determine, or of such other period of time as is unanimously then agreed upon.

(c) A director elected by cumulative voting may be removed by the members without cause if the requirements of G.S. 55A-8-08 are met unless the votes cast against removal would be sufficient to elect such director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of directors elected at the time of the director's most recent election were then being elected. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 35; 1993, c. 398, s. 1.)

#### **§ 55A-7-26. Other methods of electing directors.**

A corporation may provide in its articles of incorporation or bylaws for election of directors by members or delegates:

- (1) On the basis of chapter or other organizational unit;
- (2) By region or other geographic unit;
- (3) By preferential voting; or
- (4) By any other reasonable method. (1955, c. 1230; 1973, c. 192, ss. 1, 2; 1985, (Reg. Sess., 1986), c. 801, ss. 19, 21; 1993, c. 398, s. 1.)

#### **§ 55A-7-27. Corporation's acceptance of votes.**

(a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

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

- (1) The member is an entity and the name signed purports to be that of an officer or agent of the entity;
- (2) The name signed purports to be that of an attorney-in-fact of the member and, if the corporation requests it, evidence acceptable to the corporation of the signatory's authority to sign for the member is presented with respect to the vote, consent, waiver, or proxy appointment;
- (3) Two or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one of the



coholders and the person signing appears to be acting on behalf of all the coholders; or

(4) In the case of a corporation other than a charitable or religious corporation:

a. The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests it, evidence of fiduciary status acceptable to the corporation is presented with respect to the vote, consent, waiver, or proxy appointment;

b. The name signed purports to be that of a receiver or trustee in bankruptcy of the member, and, if the corporation requests it, evidence of this status acceptable to the corporation is presented with respect to the vote, consent, waiver, or proxy appointment.

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

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise. (1993, c. 398, s. 1; 1995, c. 509, s. 27.)

**§ 55A-7-28. Reserved for future codification purposes.**

**§ 55A-7-29. Reserved for future codification purposes.**

### Part 3. Voting Agreements.

**§ 55A-7-30. Voting agreements.**

(a) Two or more members may provide for the manner in which their voting rights will be exercised by signing an agreement for that purpose. The agreement may be valid for a period of up to 10 years. All or some of the parties to the agreement may extend it for more than 10 years from the date the first party signs the extension agreement, but the extension agreement binds only those parties signing it. For charitable or religious corporations, such agreements shall have a reasonable purpose not inconsistent with the corporation's charitable or religious purposes.

(b) Subject to subsection (a) of this section, a voting agreement created under this section may be specifically enforceable.

(c) The provisions of a voting agreement created under this section will bind a transferee of a membership covered by the agreement only if the transferee acquires the membership with knowledge of the provisions. (1993, c. 398, s. 1.)

**§§ 55A-7-31 through 55A-7-39. Reserved for future codification purposes.**

Part 4. Derivative Proceedings.

**§ 55A-7-40. Derivative proceedings.**

(a) An action may be brought in a superior court of this State, which shall have exclusive original jurisdiction over actions brought hereunder, in the right of any domestic or foreign corporation by any member or director, provided that, in the case of an action by a member, the plaintiff or plaintiffs shall allege, and it shall appear, that each plaintiff-member was a member at the time of the transaction of which he complains.

(b) The complaint shall allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and the reasons for the plaintiff's failure to obtain the action or for not making the effort. Whether or not a demand for action was made, if the corporation commences an investigation of the charges made in the demand or complaint, the court may stay any proceedings until the investigation is completed.

(c) Upon motion of the corporation, the court may appoint a committee composed of two or more disinterested directors or other disinterested persons, acceptable to the corporation, to determine whether it is in the best interest of the corporation to pursue a particular legal right or remedy. The committee shall report its findings to the court. After considering the report and any other relevant evidence, the court shall determine whether the proceeding should be continued.

(d) Such action shall not be discontinued, dismissed, compromised, or settled without the approval of the court. The court, in its discretion, may direct that notice, by publication or otherwise, shall be given to any directors, members, creditors, and other persons whose interests it determines will be substantially affected by the discontinuance, dismissal, compromise, or settlement. If notice is so directed to be given, the court may determine which one or more of the parties to the action shall bear the expense of giving the same, in such amount as the court shall determine and find to be reasonable in the circumstances, and the amount of the expense shall be awarded as costs of the action.

(e) If the action on behalf of the corporation is successful, in whole or in part, whether by means of a compromise and settlement or by a judgment, the court may award the plaintiff the reasonable expenses of maintaining the action, including reasonable attorneys' fees, and shall direct the plaintiff to account to the corporation for the remainder of any proceeds of the action.

(f) In any such action, the court, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the defendant or defendants the reasonable expenses, including attorneys' fees, incurred by them in the defense of the action.

(g) In proceedings hereunder, no member shall be entitled to obtain or have access to any communication within the scope of the corporation's attorney-client privilege which could not be obtained by or would not be accessible to a party in an action other

than on behalf of the corporation. (1985 (Reg. Sess., 1986), c. 801, s. 34; 1993, c. 398, s. 1.)