

**CHAPTER 10-19.1**  
**NORTH DAKOTA BUSINESS CORPORATION ACT**

**10-19.1-00.1. Citation.**

This chapter may be cited as the "North Dakota Business Corporation Act".

**10-19.1-01. Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. "Acquiring corporation" means the domestic or foreign corporation that acquires the shares of a corporation in an exchange.
2. "Acquiring organization" means the foreign or domestic organization acquiring the ownership interests of another foreign or domestic organization participating in an exchange.
3. "Address" means:
  - a. In the case of a registered office or principal executive office, the mailing address, including the zip code, of the actual office location, which may not be only a post-office box; and
  - b. In any other case, the mailing address, including the zip code.
4. "Articles" means:
  - a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a demand retaining the two-thirds majority for shareholder approval of certain transactions, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of abandonment, articles of conversion, and articles of dissolution.
  - b. In the case of a foreign corporation, the term includes all records serving a similar function required to be filed with the secretary of state or other officer of the state of incorporation of the foreign corporation.
5. "Authenticated electronic communication" means:
  - a. That the electronic communication is delivered:
    - (1) To the principal place of business of the corporation; or
    - (2) To an officer or agent of the corporation authorized by the corporation to receive the electronic communication; and
  - b. That the electronic communication provides information from which the corporation can reasonably conclude that the electronic communication was sent by the purported sender.
6. "Ballot" means a written ballot or a ballot transmitted by electronic communications.
7. "Board" or "board of directors" means the board of directors of a corporation.
8. "Board member" means:
  - a. An individual serving on the board of directors in the case of a corporation; and
  - b. An individual serving on the board of governors in the case of a limited liability company.
9. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how that code is designated.
10. "Class", when used with reference to ownership interests, means a category of ownership interests that differs in designation or one or more rights or preferences from another category of ownership interests of the organization.
11. "Closely held corporation" means a corporation that does not have more than thirty-five shareholders.
12. "Constituent corporation" means a corporation or a foreign corporation that:
  - a. In a merger, is either the surviving corporation or a foreign or domestic corporation that is merged into the surviving organization; or
  - b. In an exchange, is either the acquiring corporation or a foreign or domestic corporation whose shares are acquired by the acquiring organization.

13. "Constituent organization" means an organization that:
  - a. In a merger, is either the surviving organization or an organization that is merged into the surviving organization; or
  - b. In an exchange, is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.
14. "Converted organization" means the organization into which a converting organization converts pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.
15. "Converting organization" means an organization that converts into another organization pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.
16. "Corporation" or "domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.
17. "Data address" means the string of alphanumeric characters on a distributed or other electronic network or database which may be accessed only by knowledge or possession of a private key to facilitate or record transactions on the distributed or other electronic network or database.
18. "Director" means a member of the board.
19. "Distribution" means a direct or indirect transfer of money or other property, other than its own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of its shareholders in respect of its shares, and may be in the form of a dividend, an interim distribution, or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of its shares, or otherwise.
20. "Division" or "combination" means dividing or combining shares of a class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.
21. "Domestic organization" means an organization created under the laws of this state.
22. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
23. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper, including a process of communication which uses a distributed or other electronic network or database, or that:
  - a. Creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
  - b. May be directly reproduced in paper form by the recipient through an automated process.
24. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
25. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.
26. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
  - a. That a record meeting the applicable requirements of this chapter, together with the fees provided in section 10-19.1-147, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.
  - b. That the secretary of state did then:
    - (1) Record the actual date on which the record was filed, and if different the effective date of filing; and
    - (2) Record the record in the office of the secretary of state.
27. "Foreign corporation" means a corporation organized for profit which is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under this chapter.
28. "Foreign limited liability company" means a limited liability company organized under laws other than the laws of this state for a purpose for which a limited liability company may be organized under chapter 10-32.1.

29. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.
30. "Good faith" means honesty in fact in the conduct of an act or transaction.
31. "Governing body" means for an organization that is:
  - a. A corporation, its board of directors;
  - b. A limited liability company, its board of governors; or
  - c. Any other organization, the body selected by its owners that has the ultimate power to determine the policies of the organization and to control its policies.
32. "Governing statute" of an organization means:
  - a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:
    - (1) If a corporation, then this chapter;
    - (2) If a limited liability company, then chapter 10-32.1;
    - (3) If a general partnership, then chapters 45-13 through 45-21;
    - (4) If a limited partnership, then chapter 45-10.2;
    - (5) If a limited liability partnership, then chapter 45-22; and
    - (6) If a limited liability limited partnership, then chapter 45-23; and
  - b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and under which the internal affairs of the organization are governed.
33. "Identity" means the name of a shareholder or the data address for which the shareholder has knowledge or possession of the private key uniquely associated with the data address.
34. "Intentionally" means that the person referred to has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute:
  - a. If the person intentionally does the act or causes the result prohibited by the statute; or
  - b. If the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.
35. "Legal representative" means a person empowered to act for another person, including an agent, a manager, an officer, a partner, or an associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.
36. "Limited liability company" or "domestic limited liability company" means a limited liability company, other than a foreign limited liability company, organized under or governed by chapter 10-32.1.
37. "Network signature" means a string of alphanumeric characters which when broadcasted by a shareholder to the data address's corresponding distributed or other electronic network or database provides reasonable assurances to a corporation that the shareholder has knowledge or possession of the private key uniquely associated with the data address.
38. "Nonprofit corporation" means a corporation, whether domestic or foreign, incorporated under or governed by chapter 10-33.
39. "Notice":
  - a. Is given by a shareholder of a corporation to the corporation or an officer of the corporation:
    - (1) When in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation; or
    - (2) When given by a form of electronic communication consented to by the corporation to which the notice is given if by:
      - (a) Facsimile communication, when directed to a telephone number at which the corporation has consented to receive notice.

- (b) Electronic mail, when directed to an electronic mail address at which the corporation has consented to receive notice.
      - (c) Posting on an electronic network on which the corporation has consented to receive notice, together with separate notice to the corporation of the specific posting, upon the later of:
        - [1] The posting; or
        - [2] The giving of the separate notice.
      - (d) Any other form of electronic communication by which the corporation has consented to receive notice, when directed to the corporation.
    - b. Is given by a publicly held corporation to a shareholder:
      - (1) If the notice is addressed to the shareholder or group of shareholders in a manner permitted by the rules and regulations under the Securities Exchange Act of 1934, as amended, provided that the corporation has first received any affirmative written consent or implied consent required under those rules and regulations;
      - (2) When an electronic transmission has been made to a data address provided by the shareholder; or
      - (3) When electronically transmitted to the shareholder in a manner by which the shareholder has consented, when directed to the shareholder.
    - c. Is given, in all other cases:
      - (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
      - (2) When deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly as practicable to the person at an address designated by the person or at the last-known address of the person;
      - (3) When handed to the person;
      - (4) When left at the office of the person with a clerk or other person in charge of the office or:
        - (a) If there is no one in charge, when left in a conspicuous place in the office; or
        - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing there;
      - (5) When given by a form of electronic communication consented to by the person to whom the notice is given if by:
        - (a) Facsimile communication, when directed to a telephone number at which the person has consented to receive notice.
        - (b) Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice.
        - (c) Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
          - [1] The posting; or
          - [2] The giving of the separate notice.
        - (d) Any other form of electronic communication by which the person has consented to receive notice, when directed to the person; or
      - (6) When the method is fair and reasonable when all of the circumstances are considered.
    - d. Is given by mail when deposited in the United States mail with sufficient postage affixed.
    - e. Is given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision c, after having made sufficient arrangements for payment by the sender.
    - f. Is deemed received when it is given.
40. "Officer" means an individual who is eighteen years of age or more who is:

- a. Elected, appointed, or otherwise designated as the president, the treasurer, or any other officer pursuant to section 10-19.1-52; or
  - b. Deemed elected as an officer pursuant to section 10-19.1-56.
41. "Organization":
- a. Means, whether domestic or foreign, a corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, or any other person subject to a governing statute; but
  - b. Excludes:
    - (1) A nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction; and
    - (2) A nonprofit limited liability company, whether a domestic nonprofit limited liability company which is organized under chapter 10-36 or a foreign nonprofit limited liability company which is organized in another jurisdiction.
42. "Originating records" means for an organization that is:
- a. A corporation, its articles of incorporation;
  - b. A limited liability company, its articles of organization;
  - c. A limited partnership, its certificate of limited partnership;
  - d. A limited liability partnership, its registration; or
  - e. A limited liability limited partnership, its certificate of limited liability limited partnership.
43. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.
44. "Owners" means the holders of ownership interests in an organization.
45. "Ownership interests" means for a domestic or foreign organization that is:
- a. A corporation, its shares;
  - b. A limited liability company, its membership interests;
  - c. A limited partnership, its partnership interests;
  - d. A general partnership, its partnership interests;
  - e. A limited liability partnership, its partnership interests;
  - f. A limited liability limited partnership, its partnership interests; or
  - g. Any other organization, its governance or transferable interests.
46. "Parent" of a specified organization means an organization that directly, or indirectly through related organizations, owns more than fifty percent of the voting power of the ownership interests entitled to vote for directors or other members of the governing body of the specified organization.
47. "Principal executive office" means:
- a. If the corporation has an elected or appointed president, then an office where the elected or appointed president of a corporation has an office; or
  - b. If the corporation has no elected or appointed president, then the registered office of the corporation.
48. "Publicly held corporation" means a corporation that has a class of equity securities registered pursuant to section 12 of the Securities Exchange Act of 1934 [15 U.S.C. 78L], or is subject to section 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78o(d)].
49. "Record" 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.
50. "Record of shareholders" means a record administered by or on behalf of a corporation and which records the identity of all the corporation's shareholders and the number and class of shares held by each shareholder in accordance with section 10-19.1-84. The term includes a record of all issuances and transfers of shares of a corporation at the discretion of the corporation;
51. "Registered office" means the place in this state designated in a corporation's articles of incorporation or in a foreign corporation's certificate of authority as the registered office.

52. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:
- a. Owns, directly or indirectly, at least fifty percent of the ownership interests of another organization;
  - b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or
  - c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.
53. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.
54. "Security" has the meaning given in section 10-04-02.
55. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to a corporation's articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.
56. "Share" means one of the units, however designated, into which the shareholders' proprietary interests of the shareholder in a corporation are divided.
57. "Shareholder" means a person registered on the books or records of a corporation or the corporation's transfer agent or registrar as the owner of whole or fractional shares of the corporation or the owner of a private key uniquely associated with a data address that facilitates or records the sending and receiving of shares.
58. "Signed" means:
- a. That the signature of a person, which may be a facsimile affixed, engraved, by network signature, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the record, is placed on a record with the present intention to authenticate that record; and
  - b. With respect to a record required by this chapter to be filed with the secretary of state, that:
    - (1) The record is signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the directors as required under section 10-19.1-46 or the shareholders as required under section 10-19.1-74; and
    - (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.
59. "Subscriber" means a person that subscribes for shares in a corporation, whether before or after incorporation.
60. "Subsidiary" of a specified organization means an organization having more than fifty percent of the voting power of its ownership interests entitled to vote for directors, governors, or other members of the governing body of the organization owned directly, or indirectly, through related organizations, by the specified organization.
61. "Surviving corporation" means the domestic or foreign corporation resulting from a merger which:
- a. May pre-exist the merger; or
  - b. May be created by the merger.
62. "Surviving organization" means the organization resulting from a merger which:
- a. May pre-exist the merger; or
  - b. May be created by the merger.
63. "Vote" includes authorization by written action.
64. "Written action" means:
- a. A written record signed by all of the persons required to take the action; or

- b. The counterparts of a written record signed by any of the persons taking the action described.
  - (1) Each counterpart constitutes the action of the person signing; and
  - (2) All the counterparts, taken together, constitute one written action by all of the persons signing the counterparts.

#### **10-19.1-01.1. Legal recognition of electronic records and electronic signatures.**

For purposes of this chapter:

1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
3. If a provision requires a record to be in writing, an electronic record satisfies the requirement; and
4. If a provision requires a signature, an electronic signature satisfies the requirement.

#### **10-19.1-01.2. Knowledge and notice.**

1. A person knows or has knowledge of a fact if the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know or have knowledge of the fact.
2. A person has notice of a fact if the person:
  - a. Knows of the fact;
  - b. Has received notice of the fact as provided in subsection 39 of section 10-19.1-01;
  - c. Has reason to know the fact exists from all of the facts known to the person at the time in question; or
  - d. Has notice of it under subsection 3.
3. Subject to subsection 8, a person has notice of:
  - a. The intention of a corporation to dissolve, ninety days after the effective date of the filed notice of intent to dissolve;
  - b. The dissolution of a corporation, ninety days after the effective date of the filed articles of dissolution;
  - c. The conversion of a corporation, ninety days after the effective date of the filed articles of conversion; or
  - d. The merger of a corporation, ninety days after the effective date of the filed articles of merger.
4. A person notifies or gives a notification to another person by taking the steps provided in subsection 39 of section 10-19.1-01, whether or not the other person learns of it.
5. A person receives a notification as provided in subsection 39 of section 10-19.1-01.
6. Except as otherwise provided in subsection 7 and except as otherwise provided in subsection 39 of section 10-19.1-01, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the attention of the individual if the person had exercised reasonable diligence.
  - a. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines.
  - b. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the regular duties of the individual or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.
7. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by an officer or director is effective immediately as knowledge of, notice to, or receipt of a notification by the corporation, except in the case of a fraud on the corporation

committed by or with the consent of the officer or director. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by a shareholder who is not an officer or director, is not effective as knowledge by, notice to, or receipt of a notification by the corporation.

8. Notice otherwise effective under subsection 3 does not affect the power of a person to transfer real property held in the name of a corporation unless at the time of transfer a certified copy of the relevant statement, amendment, or articles, as filed with the secretary of state, has been recorded in the office of the county recorder in the county in which the real property affected by the statement, amendment, or articles is located.
9. With respect to notice given by a form of electronic communication:
  - a. Consent by an officer or director to notice given by electronic communication may be given in writing or by authenticated electronic communication. The corporation is entitled to rely on any consent so given until revoked by the officer or director. However, no revocation affects the validity of any notice given before receipt by the corporation of revocation of the consent.
  - b. An affidavit of an officer or director or an authorized agent of the corporation, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

#### **10-19.1-02. Application to corporations incorporated after June 30, 1985.**

This chapter applies to all corporations for profit incorporated for a purpose or purposes for which a corporation might be incorporated under this chapter or which are incorporated under chapters 6-05, 10-06.1, 10-30, 10-31, 26-08, or any other chapter which provides that such corporations are governed by the general corporation laws of this state.

#### **10-19.1-02.1. Reservation of legislative right.**

The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A corporation incorporated under or governed by this chapter is subject to this reserved right.

#### **10-19.1-03. Election prior to mandatory application.**

Repealed by S.L. 1999, ch. 50, § 79.

#### **10-19.1-04. Mandatory application.**

After June 30, 1986, this chapter applies to all existing corporations incorporated under any chapter of this code providing for the incorporation of corporations for a purpose or purposes for which a corporation might be incorporated under this chapter or which are otherwise to be governed by the general corporation laws of this state.

All provisions of the articles and bylaws of the corporation that may be included in the articles or bylaws under this chapter remain in effect. All provisions of the articles and bylaws of the corporation that are inconsistent with this chapter cease to be effective on July 1, 1986. Any provisions required by this chapter to be contained in the articles that do not appear in the articles are read into them as a matter of law.

#### **10-19.1-05. Retention of two-thirds majority.**

1. If the articles of a corporation described in section 10-19.1-02 do not contain a provision specifying the proportion of the voting power of the shares required for approval of amendments to the articles, plans of merger or exchange, or sales of assets, a shareholder or shareholders holding more than one-third of the voting power of all the shares entitled to vote for any or all of the above-mentioned actions, by signed written demand filed in duplicate original with the secretary of state, along with the fees provided in section 10-19.1-147, may amend the articles of the corporation to include a provision requiring the approval of the holders of two-thirds of the voting power of the shares entitled to vote for any or all of the above-mentioned actions for which no required majority was specified, notwithstanding any provisions of section



- 10-19.1-19, 10-19.1-98, or 10-19.1-104 to the contrary. Notice that the demand has been filed must be given by the shareholder to an officer of the corporation, but failure to give the notice does not invalidate the demand.
2. A shareholder or shareholders holding more than one-third of the voting power of the shares entitled to vote for dissolution of a corporation described in section 10-19.1-02, by signed written demand filed in duplicate original with the secretary of state, along with the fees provided in section 10-19.1-147, may amend the articles of the corporation to include a provision requiring the approval of the holders of two-thirds of the voting power of all the shares for the authorization of the dissolution of the corporation, notwithstanding the provisions of section 10-19.1-107. Notice that the demand was filed must be given by the shareholder to an officer of the corporation, but failure to give the notice does not invalidate the demand.
  3. A signed written demand by the shareholders of a corporation pursuant to subsection 1 or 2 is valid only if filed with the secretary of state before July 1, 1986.

**10-19.1-06. Transition.**

The continuation or completion of any act by a corporation that has not incorporated under, but has become governed by, this chapter, and the continuation or performance of any executed or wholly or partially executory contract, conveyance, or transfer to or by the corporation, if otherwise lawful before the corporation became governed by this chapter, remains valid, and may be continued, completed, consummated, enforced, or terminated as required or permitted by a statute applicable prior to the date on which the corporation became governed by this chapter.

**10-19.1-07. Reservation of legislative power.**

Repealed by S.L. 1995, ch. 55, § 30.

**10-19.1-08. Purposes.**

A corporation may be incorporated under this chapter for any lawful business purpose or purposes, unless some other statute of this state requires incorporation for any of those purposes under a different law. Unless otherwise provided in its articles, a corporation has general business purposes.

**10-19.1-09. Incorporators.**

One or more individuals of the age of eighteen years or more may act as incorporators of a corporation by filing with the secretary of state articles of incorporation for the corporation.

**10-19.1-10. Articles.**

1. The articles of incorporation must contain:
  - a. The name of the corporation.
  - b. The name of the registered agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of that noncommercial registered agent in this state.
  - c. The address of the principal executive office.
  - d. The aggregate number of shares that the corporation has authority to issue.
  - e. The name and address of each incorporator.
  - f. The effective date of incorporation if a later date than that on which the certificate of incorporation is issued by the secretary of state, which may not be later than ninety days after the date on which the certificate of incorporation is issued.
2. The following provisions govern a corporation unless modified in the articles or in a shareholder control agreement under section 10-19.1-83:
  - a. A corporation has general business purposes as provided in section 10-19.1-08.
  - b. A corporation has perpetual existence and certain powers as provided in section 10-19.1-26.

- c. The power to adopt, amend, or repeal the bylaws is vested in the board as provided in section 10-19.1-31.
  - d. A corporation must allow cumulative voting for directors as provided in section 10-19.1-39.
  - e. The affirmative vote of a majority of directors present is required for an action of the board as provided in section 10-19.1-46.
  - f. A written action by the board taken without a meeting must be signed by all directors as provided in section 10-19.1-47.
  - g. The board may authorize the issuance of securities and rights to purchase securities as provided in subsection 1 of section 10-19.1-61.
  - h. All shares are common shares entitled to vote and are of one class and one series as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
  - i. All shares have equal rights and preferences in all matters not otherwise provided for by the board as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
  - j. The par value of shares is fixed at one cent per share for certain purposes and may be fixed by the board for certain other purposes as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
  - k. The board may effect share dividends, divisions, and combinations under certain circumstances without shareholder approval as provided in section 10-19.1-61.1.
  - l. The board or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends or splits and determine the value of nonmonetary consideration as provided in subsection 1 of section 10-19.1-63.
  - m. Shares of a class or series may not be issued to holders of shares of another class or series to effectuate share dividends or splits, unless authorized by a majority of the voting power of the shares of the same class or series as the shares to be issued as provided in subsection 1 of section 10-19.1-63.
  - n. A corporation may issue rights to purchase securities whose terms, provisions, and conditions are fixed by the board as provided in section 10-19.1-64.
  - o. A shareholder has certain pre-emptive rights, unless otherwise provided by the board as provided in section 10-19.1-65.
  - p. Each share has one vote unless otherwise provided in the terms of the share as provided in subsection 5 of section 10-19.1-73.2.
  - q. The affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the shareholders, except when this chapter requires the affirmative vote of:
    - (1) A plurality of the votes cast as provided in subsection 1 of section 10-19.1-39; or
    - (2) A majority of the voting power of all shares entitled to vote as provided in subsection 1 of section 10-19.1-74.
  - r. A written action of shareholders must be signed by all shareholders as provided in section 10-19.1-75.
  - s. Shares of a corporation acquired by the corporation may be reissued as provided in subsection 1 of section 10-19.1-93.
  - t. An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding shares entitled to vote of that corporation will be increased by more than twenty percent immediately after the exchange as provided in subdivision c of subsection 3 of section 10-19.1-98.
  - u. An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding participating shares of that corporation will be increased by more than twenty percent immediately after the exchange as provided in subdivision d of subsection 3 of section 10-19.1-98.
3. The following provisions govern a corporation unless modified in the articles, in a shareholder control agreement under section 10-19.1-83, or in the bylaws:
- a. A director serves for an indefinite term that expires upon the election and qualification of a successor as provided in section 10-19.1-35.

- b. The compensation of directors is fixed by the board as provided in section 10-19.1-37.
  - c. The method provided in section 10-19.1-41 or 10-19.1-41.1 must be used for removal of directors.
  - d. The method provided in section 10-19.1-42 must be used for filling board vacancies.
  - e. If the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-19.1-43.
  - f. A director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-19.1-43.
  - g. A majority of the board is a quorum for a board meeting as provided in section 10-19.1-45.
  - h. A committee:
    - (1) Must consist of one or more individuals, who need not be directors, appointed by affirmative vote of a majority of the directors present as provided in subsection 2 of section 10-19.1-48; and
    - (2) May create one or more subcommittees, each consisting of one or more members of the committees and may delegate to the subcommittee any or all of the authority of the committee as provided in subsection 7 of section 10-19.1-48.
  - i. The board may establish a special litigation committee as provided in section 10-19.1-48.
  - j. Unless the board determines otherwise, the officers have specified duties as provided in section 10-19.1-53.
  - k. Officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so as provided in section 10-19.1-59.
  - l. The corporation may establish uncertificated shares as provided in subsection 6 of section 10-19.1-66.
  - m. Regular meetings of shareholders need not be held, unless demanded by a shareholder under certain conditions as provided in section 10-19.1-71.
  - n. No fewer than ten nor more than fifty days' notice is required for a meeting of shareholders as provided in subsection 3 of section 10-19.1-73.
  - o. The board may fix a date up to fifty days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting as provided in subsection 1 of section 10-19.1-73.2.
  - p. The number of shares required for a quorum at a shareholders' meeting is a majority of the voting power of the shares entitled to vote at the meeting as provided in section 10-19.1-76.
  - q. Indemnification of certain persons is required as provided in section 10-19.1-91.
  - r. The board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement as provided in subsection 1 of section 10-19.1-92.
4. The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the articles or, except for naming members of the first board fixing a greater than majority director or shareholder vote or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, or eliminating or limiting a director's personal liability, in the bylaws:
- a. The members of the first board may be named in the articles as provided in subsection 1 of section 10-19.1-32.
  - b. A manner for increasing or decreasing the number of directors as provided in section 10-19.1-33.
  - c. Additional qualifications for directors may be imposed as provided in section 10-19.1-34.
  - d. Directors may be classified as provided in section 10-19.1-38.

- e. The day or date, time, and place of board meetings may be fixed as provided in subsection 1 of section 10-19.1-43.
  - f. Absent directors may be permitted to give written consent or opposition to a proposal as provided in section 10-19.1-44.
  - g. A larger than majority vote may be required for board action as provided in section 10-19.1-46.
  - h. A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles as provided in section 10-19.1-50.
  - i. Authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation other than the president as provided in section 10-19.1-53.
  - j. Additional officers may be designated as provided in section 10-19.1-52.
  - k. Additional powers, rights, duties, and responsibilities may be given to officers as provided in section 10-19.1-53.
  - l. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-19.1-58.
  - m. A certain officer or agent may be authorized to sign share certificates as provided in subsection 1 of section 10-19.1-66.
  - n. The transfer or registration of transfer of securities may be restricted as provided in section 10-19.1-70.
  - o. The day or date, time, and place of regular shareholder meetings may be fixed as provided in subsection 3 of section 10-19.1-71.
  - p. Certain persons may be authorized to call special meetings of shareholders as provided in subsection 1 of section 10-19.1-72.
  - q. Notices of shareholder meetings may be required to contain certain information as provided in subsection 3 of section 10-19.1-73.
  - r. Voting rights may be granted in or pursuant to the articles to persons who are not shareholders as provided in subsection 6 of section 10-19.1-73.2.
  - s. A larger than majority vote may be required for shareholder action as provided in section 10-19.1-74.
  - t. Corporate actions giving rise to dissenter rights may be designated as provided in subdivision d of subsection 1 of section 10-19.1-87.
  - u. The rights and priorities of persons to receive distributions may be established as provided in section 10-19.1-92.
5. The articles may contain other provisions not inconsistent with section 10-19.1-32 or any other provision of law relating to the management of the business or the regulation of the affairs of the corporation.
  6. It is not necessary to set forth in the articles any of the corporate powers granted by this chapter.
  7. Subsection 4 does not limit:
    - a. The permissible scope of a shareholder control agreement; or
    - b. The right of the board, by resolution, to take an action that the bylaws may authorize under this section without including the authorization in the bylaws, unless the authorization is required to be included in the bylaws by another provision of this chapter.
  8. Except for provisions included pursuant to subsection 1, any provision of the articles may:
    - a. Be made dependent upon facts ascertainable outside the articles, but only if the manner in which the facts operate upon the provision is clearly and expressly set forth in the articles; and
    - b. Incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the corporation, but only if the corporation retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

### **10-19.1-11. Filing of articles of incorporation.**

An original of the articles of incorporation must be filed with the secretary of state. If the secretary of state finds that the articles of incorporation conform to law and all fees are paid under section 10-19.1-147, the secretary of state shall issue a certificate of incorporation to the incorporators or the incorporators' representative.

### **10-19.1-12. Effective date of incorporation.**

The corporate existence begins upon the issuance of the certificate of incorporation or at a later date as specified in the articles of incorporation. The certificate of incorporation is conclusive evidence that all conditions precedent and required to be performed by the incorporators have been performed and that the corporation has been incorporated under this chapter, except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

### **10-19.1-13. Corporate name. (Contingent effective date - [See note](#))**

1. The corporate name:
  - a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
  - b. Must contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.
  - c. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
  - d. May not contain a word or phrase that indicates or implies the corporation:
    - (1) Is incorporated for a purpose other than:
      - (a) A lawful business purpose for which a corporation may be incorporated under this chapter; or
      - (b) For a purpose stated in its articles of incorporation; or
    - (2) May not be incorporated under this chapter.
  - e. May not be the same as, or deceptively similar to:
    - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a record that complies with subsection 3, of:
      - (a) Another corporation;
      - (b) A corporation incorporated or authorized to do business in this state under another chapter of this code;
      - (c) A limited liability company;
      - (d) A limited partnership;
      - (e) A limited liability partnership; or
      - (f) A limited liability limited partnership;
    - (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
    - (3) A fictitious name registered in the manner provided in chapter 45-11;
    - (4) A trade name registered in the manner provided in chapter 47-25; or
    - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
2. The secretary of state shall determine whether a corporate name is "deceptively similar" to another name for purposes of this chapter.
3. If the secretary of state determines that a corporate name is "deceptively similar" to another name for purposes of this chapter, then the corporate name may not be used unless there is filed with the articles:
  - a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or

- b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
4. This subsection does not affect the right of a domestic corporation existing on July 1, 1986, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.
5. This section and section 10-19.1-14 do not:
  - a. Abrogate or limit:
    - (1) The law of unfair competition or unfair practices;
    - (2) Chapter 47-25;
    - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
    - (4) Any other rights to the exclusive use of names or symbols; or
  - b. Derogate the common law or the principles of equity.
6. A domestic or foreign corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought to be used:
  - a. Was incorporated, organized, formed, or registered under the laws of this state;
  - b. Is authorized to transact business or conduct activities in this state;
  - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11;
  - e. Holds a trade name registered in the manner provided in chapter 47-25; or
  - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
7. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from doing business under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.
8. A corporation whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-19.1-146 may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-19.1-11, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 2. A corporation that cannot reacquire the use of its corporate name shall adopt a new corporate name that complies with the provisions of this section:
  - a. By refiling articles of incorporation pursuant to section 10-19.1-11;
  - b. By amending pursuant to section 10-19.1-17; or
  - c. By reinstating pursuant to section 10-19.1-146.
9. Subject to section 10-19.1-133, this section applies to any foreign corporation transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
10. An amendment that only changes the name of the corporation may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the shareholders as provided in section 10-19.1-18.
11. A corporation that files its articles of incorporation with an effective date later than the date of filing as provided in section 10-19.1-12 shall maintain the right to the name until the effective date.

**Corporate name. (Contingent effective date - [See note](#))**

1. The corporate name:

- a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
  - b. Must contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.
  - c. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or an abbreviation of these words.
  - d. May not contain a word or phrase indicating or implying the corporation:
    - (1) Is incorporated for a purpose other than:
      - (a) A lawful business purpose for which a corporation may be incorporated under this chapter; or
      - (b) For a purpose stated in its articles of incorporation; or
    - (2) May not be incorporated under this chapter.
  - e. Must be distinguishable in the records of the secretary of state from:
    - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a record that complies with subsection 3, of:
      - (a) Another corporation;
      - (b) A corporation incorporated or authorized to do business in this state under another chapter of this code;
      - (c) A limited liability company;
      - (d) A limited partnership;
      - (e) A limited liability partnership; or
      - (f) A limited liability limited partnership;
    - (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
    - (3) A fictitious name registered in the manner provided in chapter 45-11;
    - (4) A trade name registered in the manner provided in chapter 47-25; or
    - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
2. The secretary of state shall determine whether a corporate name is distinguishable in the secretary of state's records from another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.
  3. If the secretary of state determines a corporate name is indistinguishable in the secretary of state's records from another name for purposes of this chapter, the corporate name may not be used unless there is filed with the articles:
    - a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be indistinguishable; or
    - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
  4. This section does not affect the right of a domestic corporation existing on July 1, 1986, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.
  5. This section and section 10-19.1-14 do not:
    - a. Abrogate or limit:
      - (1) The law of unfair competition or unfair practices;
      - (2) Chapter 47-25;
      - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
      - (4) Any other rights to the exclusive use of names or symbols; or
    - b. Derogate the common law or the principles of equity.
  6. A domestic or foreign corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another

organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought to be used:

- a. Was incorporated, organized, formed, or registered under the laws of this state;
  - b. Is authorized to transact business or conduct activities in this state;
  - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11;
  - e. Holds a trade name registered in the manner provided in chapter 47-25; or
  - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
7. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from doing business under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.
  8. A corporation whose period of existence has expired or is involuntarily dissolved by the secretary of state pursuant to section 10-19.1-146 or 10-19.1-146.1 may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-19.1-11, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 3. A corporation that cannot reacquire the use of its corporate name shall adopt a new corporate name that complies with the provisions of this section:
    - a. By refiling articles of incorporation pursuant to section 10-19.1-11;
    - b. By amending pursuant to section 10-19.1-17; or
    - c. By reinstating pursuant to section 10-19.1-146.
  9. Subject to section 10-19.1-133, this section applies to a foreign corporation transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
  10. An amendment that only changes the name of the corporation may be authorized by a resolution approved by the board and may be submitted to and approved by the shareholders as provided in section 10-19.1-18.
  11. A corporation that files its articles of incorporation with an effective date later than the date of filing as provided in section 10-19.1-12 shall maintain the right to the name until the effective date.

#### **10-19.1-14. Reserved name.**

1. The exclusive right to the use of a corporate name otherwise permitted by section 10-19.1-13 may be reserved by any person.
2. The reservation must be made by filing with the secretary of state a request that the name be reserved, together with the fees provided in section 10-19.1-147:
  - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
  - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a corporate name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee, together with the fees provided in section 10-19.1-147.
4. The right to the exclusive use of a corporate name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation, together with the fees provided in section 10-19.1-147.



5. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

**10-19.1-15. Registered office - Registered agent.**

A corporation shall continuously maintain a registered agent in this state as provided by chapter 10-01.1, and if a noncommercial registered agent, then the address of that noncommercial registered agent in this state.

**10-19.1-16. Change of registered office or registered agent - Change of name of registered agent.**

As provided in chapter 10-01.1:

1. A corporation may change its registered office, change its registered agent, or state a change in the name of its registered agent.
2. A registered agent of a corporation may resign.

**10-19.1-17. Amendment of articles.**

The articles of a corporation may be amended at any time to include or modify any provision that is required or permitted to appear in the articles or to omit any provision not required to be included in the articles, except that when articles are amended to restate them, the name and address of each incorporator and each initial director may be omitted. If only a change of address of the principal executive office is required, an amendment need not be filed; however, the change of address of the principal executive office must then be reported on the annual report filed after the change or be submitted in writing to the secretary of state without a filing fee. Unless otherwise provided in this chapter, the articles may be amended or modified only in accordance with sections 10-19.1-18, 10-19.1-19, and 10-19.1-20.

**10-19.1-18. Procedure for amendment when no shares are outstanding.**

Before the issuance of shares by a corporation, the articles also may be amended pursuant to section 10-19.1-30 by the incorporators or by the board. The articles may be amended by the board to change or cancel a statement pursuant to subsection 4 of section 10-19.1-61, establishing or fixing the rights and preferences of a class or series of shares before the issuance of any shares of that class or series or at any subsequent time that no shares of that class or series are outstanding by filing articles of amendment or a statement of cancellation, as appropriate, with the secretary of state. If a statement filed pursuant to subsection 4 of section 10-19.1-61 is canceled, the shares of the class and series originally covered by the statement have the status of authorized but unissued, undesignated shares, unless the articles otherwise provide. If the articles provide that the canceled shares may not be reissued, the statement of cancellation must include the information specified in subsection 2 of section 10-19.1-93.

**10-19.1-19. Procedure for amendment after issuance of shares.**

1. Except as otherwise provided in section 10-19.1-18, after the issuance of shares by the corporation, the articles may be amended in the manner set forth in this section.
2. A resolution approved by the affirmative vote of a majority of the directors present, or proposed by a shareholder or shareholders holding five percent or more of the voting power of the shares entitled to vote, that sets forth the proposed amendment must be submitted to a vote at the next regular or special meeting of the shareholders of which notice has not yet been given but still can be timely given. Any number of amendments may be submitted to the shareholders and voted upon at one meeting, but the same or substantially the same amendment proposed by a shareholder or shareholders need not be submitted to the shareholders or be voted upon at more than one meeting during a fifteen-month period, except that if a corporation is registered or reporting under the federal securities laws, the provisions of this sentence do not apply to the extent that these provisions are in conflict with the federal securities laws or rules adopted under those laws. The resolution may amend the articles in their entirety to restate and supersede the original articles and all amendments to them.

3. Written notice of the shareholders' meeting setting forth the substance of the proposed amendment must be given to each shareholder entitled to vote in the manner provided in section 10-19.1-73 for the giving of notice of meetings of shareholders.
4. The proposed amendment to the articles is adopted:
  - a. When approved by the affirmative vote of the shareholders required by section 10-19.1-74, except as provided in subdivision b and in subsection 5; or
  - b. If the articles provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, or if it is proposed to amend the articles to provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, the affirmative vote necessary to add the provision to, or to amend an existing provision in, the articles is the larger of:
    - (1) The specified proportion or number or, in the absence of a specific provision, the affirmative vote necessary to transact the type of business described in the proposed amendment at a meeting immediately before the effectiveness of the proposed amendment; or
    - (2) The specified proportion or number that would, upon effectiveness of the proposed amendment, be necessary to transact the specified type of business at a meeting.
5. An amendment that merely restates the existing articles, as amended, may be authorized by a resolution approved by the board and may be submitted to and approved by the shareholders as provided in subsections 2, 3, and 4.
6. Notwithstanding any contrary provision of this chapter, the board of a corporation that is registered as an open-end management investment company under the Investment Company Act of 1940, as amended, may, without shareholder approval, increase or decrease, but not below the then outstanding shares, the aggregate number of shares the corporation has authority to issue, including shares of any class or series, unless a provision has been included in the corporation's articles prohibiting the board from increasing or decreasing the aggregate number of shares, or any class or series of shares, as applicable, that the corporation has authority to issue.

**10-19.1-20. Class or series voting on amendments.**

The holders of the outstanding shares of a class or series are entitled to vote as a class or series upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles, if the amendment would:

1. Increase or decrease the par value of the shares of the class or series;
2. Effect an exchange, reclassification, or cancellation of all or part of the shares of the class or series or effect a combination of outstanding shares of a class or series into a lesser number of shares of the class or series when each other class and series is not subject to a similar combination;
3. Effect an exchange, or create a right of exchange, of all or any part of the shares of another class or series for the shares of the class or series;
4. Change the rights or preferences of the shares of the class or series;
5. Create a new class or series of shares having rights and preferences prior and superior to the shares of that class or series, or increase the rights and preferences or the number of authorized shares, of a class or series having rights and preferences prior or superior to the shares of that class or series;
6. Divide the shares of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the shares of each series, or authorize the board to do so;
7. Limit or deny any existing pre-emptive rights of the shares of the class or series; or
8. Cancel or otherwise affect distributions on the shares of the class or series that have accrued but have not been declared.

**10-19.1-21. Articles of amendment.**

When an amendment has been adopted, articles of amendment must be prepared which contain:

1. The name of the corporation.
2. The amendment adopted.
3. The date of the adoption of the amendment by the shareholders or by the incorporators or the board when no shares have been issued.
4. If the amendment restates the articles in their entirety, a statement that the restated articles supersede the original articles and all amendments to the original articles.
5. A statement that the amendment has been adopted pursuant to this chapter.

**10-19.1-22. Effect of amendment.**

1. An amendment does not affect an existing cause of action in favor of or against the corporation, nor a pending suit to which the corporation is a party, nor the existing rights of persons other than shareholders.
2. If the corporate name is changed by the amendment, a suit brought by or against the corporation under its former name does not abate for that reason.
3. When effective under section 10-19.1-24, an amendment restating the articles in their entirety supersedes the original articles and all amendments to the original articles.

**10-19.1-23. Filing articles of amendment.**

An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law and all fees have been paid as provided under section 10-19.1-147, the articles of amendment must be recorded in the office of the secretary of state. A corporation that amends the corporate name and is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the corporation's name in each registration when the corporation files an amendment.

**10-19.1-24. Effective date of articles of amendment.**

The articles of amendment are effective upon acceptance by the secretary of state or at another time within thirty days after acceptance if the articles of amendment so provide.

**10-19.1-25. Amendment of articles in court-supervised reorganization.**

1. Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of the corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganization of corporations, the articles may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and to put it into effect, so long as the articles as amended contain only provisions which might be lawfully contained in original articles at the time of making the amendment. In particular, and without limitation upon any general power of amendment, the articles may be amended to:
  - a. Change the corporate name, period of duration, or corporate purposes of the corporation.
  - b. Repeal, alter, or amend the bylaws of the corporation.
  - c. Change the aggregate number of shares, or shares of any class, which the corporation has the authority to issue.
  - d. Change the preferences, limitations, relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify, or cancel all or any part thereof, whether issued or unissued.
  - e. Authorize the issuance of bonds, debentures, or other obligations of the corporation, whether convertible into shares of any class or bearing warrants or

- other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof.
- f. Constitute or reconstitute and classify or reclassify a board and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.
2. Amendments to the articles pursuant to subsection 1 must be made in the following manner:
    - a. Articles of amendment approved by decree or order of the court must be executed and verified by the person or persons designated or appointed by the court for that purpose and must set forth the name of the corporation, the amendments of the articles approved by the court, the date of the decree or order approving the articles of amendment, and the title of the proceedings in which the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation under the provisions of an applicable statute of the United States.
    - b. An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law and that all fees have been paid as provided in section 10-19.1-147, the original must be recorded in the office of the secretary of state.
  3. The articles of amendment become effective upon their acceptance by the secretary of state or at another time within thirty days after acceptance if the articles of amendment so provide.
  4. The articles are amended accordingly with the same effect as if the amendment had been adopted by unanimous action of the directors and shareholders.

**10-19.1-26. General powers.**

1. A corporation has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles.
2. A corporation has perpetual duration.
3. A corporation may sue and be sued, complain and defend and participate as a party or otherwise in any legal, administrative, or arbitration proceeding, in its corporate name.
4. A corporation may purchase, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest in property, wherever situated.
5. A corporation may sell, convey, mortgage, create a security interest in, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest in property, wherever situated.
6. A corporation may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of, use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any domestic or foreign government or instrumentality.
7. A corporation may make contracts and incur liabilities, borrow money, issue its securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises, and income.
8. A corporation may invest and reinvest its funds.
9. A corporation may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the corporation, as security for the payment of money loaned, advanced, or invested.
10. A corporation may conduct its business, carry on its operations, have offices, and exercise the powers granted by this chapter anywhere in the universe.
11. Except as otherwise prohibited by law, a corporation may make donations, irrespective of corporate benefit, for the public welfare; for social, community, charitable, religious, educational, scientific, civic, literary, testing, and public safety purposes; for the purpose of fostering national or international amateur sports competition; the prevention of cruelty to children and animals; and for similar or related purposes.

12. A corporation may pay pensions, retirement allowances, and compensation for past services, and establish employee or incentive benefit plans, trusts, and provisions for the benefit of its and its related organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.
13. A corporation may participate in any capacity in the promotion, organization, ownership, management, and operation of any organization or in any transaction, undertaking, or arrangement that the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control.
14. A corporation may provide for its benefit life insurance and other insurance with respect to the services of its officers, directors, employees, and agents, or on the life of a shareholder for the purpose of acquiring at the death of the shareholder any or all shares in the corporation owned by the shareholder.
15. A corporation may have, alter at pleasure, and use a corporate seal as provided in section 10-19.1-27.
16. A corporation may adopt, amend, and repeal bylaws relating to the management of the business or the regulation of the affairs of the corporation as provided in section 10-19.1-31.
17. A corporation may establish committees of the board of directors, elect or appoint persons to the committees, and define their duties as provided in section 10-19.1-48 and fix their compensation.
18. A corporation may elect or appoint officers, employees, and agents of the corporation, and define their duties and fix their compensation.
19. A corporation may issue securities and rights to purchase securities as provided in sections 10-19.1-61 through 10-19.1-69.
20. A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 10-19.1-89.
21. A corporation may make advances to its directors, officers, and employees and those of its subsidiaries as provided in section 10-19.1-90.
22. A corporation shall indemnify those persons identified in section 10-19.1-91 against certain expenses and liabilities only as provided in section 10-19.1-91 and may indemnify other persons.
23. A corporation may conduct all or part of its business under one or more trade names as provided in chapter 47-25.
24. A corporation may acquire an ownership interest in another organization.
25. A corporation may have and exercise all other powers necessary or convenient to effect any or all of the business purposes for which the corporation is incorporated.
26. A corporation only may seek to obtain a license or permit required of the state after the articles of incorporation are filed with the secretary of state.

#### **10-19.1-27. Corporate seal.**

A corporation may, but need not, have a corporate seal. The use or nonuse of a corporate seal does not affect the validity, recordability, or enforceability of a record or act. If a corporation has a corporate seal, the use of the seal by the corporation on a record is not necessary.

#### **10-19.1-28. Defense of ultra vires.**

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation is invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer but such lack of capacity or power may be asserted:

1. In a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the

unauthorized acts or transfers sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract. However, anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

2. In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation.
3. In a proceeding by the attorney general, as provided in this chapter, to dissolve the corporation or to enjoin the corporation from the transaction of unauthorized business.

#### **10-19.1-29. Unauthorized assumption of corporate powers - Liability.**

All persons who assume to act as a corporation without authority are jointly and severally liable for all debts and liabilities incurred or arising as a result.

#### **10-19.1-30. Organization.**

1. If the first board is not named in the articles, the incorporators may elect the first board or may act as directors with all of the powers, rights, duties, and liabilities of directors, until directors are elected or until shares are issued, whichever occurs first.
2. After the issuance of the certificate of incorporation, the incorporators or the directors named in the articles shall, within a reasonable time, hold an organizational meeting at the call of a majority of the incorporators or of the directors named in the articles or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the corporation, including amending the articles; electing directors; adopting bylaws; electing officers; adopting banking resolutions; authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials; approving a corporate seal; approving forms of certificates for shares of the corporation; adopting a fiscal year for the corporation; accepting subscriptions for and issuing shares of the corporation; and making any appropriate tax elections. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each incorporator or director named, stating the date, time, and place of the meeting. Incorporators and directors may waive notice of an organizational meeting in the same manner a director may waive notice of meetings of the board under subsection 5 of section 10-19.1-43.

#### **10-19.1-31. Bylaws.**

1. A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management or the regulation of the affairs of the corporation not inconsistent with section 10-19.1-32 or any other provision of law or the articles, including:
  - a. The number of directors, and the qualifications, manner of election, powers, duties, and compensation, if any, of directors;
  - b. The qualifications of shareholders;
  - c. Different classes of shares;
  - d. The manner of admission, withdrawal, suspension, and expulsion of shareholders;
  - e. Property, voting, and other rights and privileges of shareholders;
  - f. The appointment and authority of committees;
  - g. The appointment or election, duties, compensation, and tenure of officers;

- h. The time, place, and manner of calling, conducting, and giving notice of shareholder, board, and committee meetings, or of conducting mail ballots;
    - i. The making of reports and financial statements to shareholders; or
    - j. The number establishing a quorum for meetings of members and the board.
  2. Unless reserved by the articles to shareholders with voting rights, initial bylaws may be adopted by a majority of the incorporators, or by the first board pursuant to section 10-19.1-30. Unless reserved by the articles to the shareholders with voting rights, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the shareholders, exercisable in the manner provided in subsection 3, to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board.
  3. Unless the articles or bylaws provide otherwise, a shareholder or shareholders holding five percent or more of the voting power of the shares entitled to vote may propose a resolution for action by the shareholders to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board.
    - a. The resolution must set forth the provisions proposed for adoption, amendment, or repeal.
    - b. The limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in subsections 2, 3, and 4 of section 10-19.1-19 for amendment of the articles.

**10-19.1-32. Board.**

1. The business and affairs of a corporation must be managed by or under the direction of a board, subject to subsection 2 and section 10-19.1-83. The members of the first board may be named in the articles or elected by the incorporators pursuant to section 10-19.1-30 or by the shareholders.
2. The holders of the shares entitled to vote for directors of the corporation may, by unanimous affirmative vote, take any action that this chapter requires or permits the board to take. As to an action taken by the shareholders in that manner:
  - a. The directors have no duties, liabilities, or responsibilities as directors under this chapter with respect to or arising from the action.
  - b. The shareholders collectively and individually have all of the duties, liabilities, and responsibilities of directors under this chapter with respect to and arising from the action.
  - c. If the action relates to a matter required or permitted by this chapter or by any other law to be approved or adopted by the board, either with or without approval or adoption by the shareholders, the action is deemed to have been approved or adopted by the board.
  - d. A requirement that an instrument filed with a governmental agency contain a statement that the action has been approved and adopted by the board is satisfied by a statement that the shareholders have taken the action under this subsection.

**10-19.1-33. Number of directors.**

The board must consist of one or more directors. The number of directors must be fixed by or in the manner provided in the articles or bylaws. The number of directors may be increased or, subject to section 10-19.1-41, decreased at any time by amendment to or in the manner provided in the articles or bylaws.

**10-19.1-34. Qualifications and election of directors.**

Directors must be individuals. The method of election and any additional qualifications for directors may be imposed by or in the manner provided in the articles or bylaws.

**10-19.1-35. Terms of directors.**

1. With respect to length of terms:

- a. Unless fixed terms are provided for in the articles or bylaws, a director serves for an indefinite term that expires at the next regular meeting of the shareholders.
    - (1) A fixed term of a director, other than an ex officio director, may not exceed five years.
    - (2) An ex officio director serves as long as the director holds the office or position designated in the articles or bylaws.
  - b. Unless the articles or bylaws provide otherwise, a director holds office until expiration of the term for which the director was elected or appointed and until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the director.
  - c. A decrease in the number of directors or term of office does not shorten an incumbent director's term.
  - d. Except as provided in the articles or bylaws, the term of a director filling a vacancy expires at the end of the unexpired term that the director is filling.
2. The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the groups need not be uniform.

**10-19.1-36. Acts not void or voidable.**

The expiration of a director's term with or without the election of a qualified successor does not make prior or subsequent acts of the officers or the board void or voidable.

**10-19.1-37. Compensation of directors.**

Subject to any limitations in the articles or bylaws, the board may fix the compensation of directors.

**10-19.1-38. Classification of directors.**

Directors may be divided into classes as provided in the articles or bylaws.

**10-19.1-39. Voting for directors - Cumulative voting.**

With respect to the election of directors:

1. Unless otherwise provided in the articles and subject to subsection 2, directors are elected by a plurality of the voting power of the shares present and entitled to vote on the election of directors at a meeting at which a quorum is present.
2. Unless otherwise provided in the articles, and except as provided in subsection 4 of section 10-19.1-41, each shareholder entitled to vote for directors has the right to cumulate those votes in all elections of directors by giving written notice of intent to cumulate those votes to any officer of the corporation before the meeting, or to the presiding officer at the meeting at which the election is to occur at any time before the election of directors at the meeting, in which case:
  - a. The presiding officer at the meeting shall announce, before the election of directors, that shareholders may cumulate their votes; and
  - b. Each shareholder shall cumulate those votes either by casting for one candidate the number of votes equal to the number of directors to be elected multiplied by the number of votes represented by the shares entitled to vote, or by distributing all of those votes on the same principle among any number of candidates.

**10-19.1-40. Resignation of directors.**

1. A director may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective time is specified in the notice.
2. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.



**10-19.1-41. Nonjudicial removal of directors.**

1. The provisions of this section apply unless modified by the articles, the bylaws, or an agreement described in section 10-19.1-83.
2. A director may be removed at any time, with or without cause, if:
  - a. The director was named by the board to fill a vacancy;
  - b. The shareholders have not elected directors in the interval between the time of the appointment to fill a vacancy and the time of the removal; and
  - c. A majority of the remaining directors present affirmatively vote to remove the director.
3. Except as provided in subsection 4, any or all of the directors may be removed at any time, with or without cause, by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote at an election of directors. However, if a director has been elected solely by the holders of a class or series of shares, as stated in the articles or bylaws, then that director may be removed only by the affirmative vote of the holders of a majority of the voting power of all shares of that class or series entitled to vote at an election of that director.
4. In a corporation having cumulative voting, unless the entire board is removed simultaneously, a director is not removed from the board if there are cast against removal of the director the votes of a proportion of the voting power sufficient to elect the director at an election of the entire board under cumulative voting.
5. New directors may be elected at a meeting at which directors are removed. If the corporation allows cumulative voting and if a shareholder notifies the presiding officer at any time prior to the election of new directors of interest to cumulate the votes of the shareholders, then the presiding officer shall announce before the election that cumulative voting is in effect and shareholders shall cumulate their votes as provided in subdivision b of subsection 2 of section 10-19.1-39.

**10-19.1-41.1. Removal of directors by judicial proceeding.**

1. The district court of the county where the principal executive office of a corporation is located may remove any director of the corporation from office in a proceeding commenced either by the corporation or its shareholders holding at least ten percent of the voting power of any class of shares, if the court finds:
  - a. The director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion, with respect to the corporation;
  - b. A final judgment has been entered finding that the director has violated section 10-19.1-50; and
  - c. Removal is in the best interest of the corporation.
2. The court that removes a director may bar the director from serving on the board for a period prescribed by the court.
3. If the shareholders commence a proceeding under subdivision a of subsection 1, then the corporation shall be made a party defendant.

**10-19.1-42. Board vacancies.**

1. Unless different rules for filling vacancies are provided for in the articles or bylaws:
  - a. Vacancies on the board resulting from the death, resignation, removal, or disqualification of a director may be filled by the affirmative vote of a majority of the remaining directors, even though the remaining directors constitute less than a quorum; and
  - b. Vacancies on the board resulting from newly created directorships may be filled by the affirmative vote of a majority of the directors serving at the time of the increase.
2. Each director elected under this section to fill a vacancy holds office until a qualified successor is elected by the shareholders at the next regular or special meeting of the shareholders.
3. A vacancy that will occur at a specific later date may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

#### **10-19.1-43. Board meetings.**

1. Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subsection 2.
  - a. If the articles, bylaws, or board fail to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles or bylaws provide otherwise.
  - b. The board may determine under subsection 2 that a meeting of the board shall be held solely by means of remote communication.
  - c. Any participation in a meeting by a means set forth in subsection 2 constitutes presence in person at the meeting.
2. Any meeting may be conducted:
  - a. Solely by one or more means of remote communication through which all of the directors may participate with each other during the meeting:
    - (1) If the notice required by subsection 3 is given for the meeting; and
    - (2) If the number of directors participating in the meeting is a quorum at a meeting.
  - b. By means of conference telephone or, if authorized by the board, by one or more other means of remote communication, in each case, through which the director, other directors so participating, and all directors physically present at the meeting may participate with each other during the meeting.
3. Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings pursuant to subsection 2 of section 10-19.1-30, at least three days' notice, to all directors of the date, time, and place of the meeting.
  - a. The notice need not state the purpose of the meeting unless the articles or bylaws require it.
  - b. Any notice to a director given under any provision of this chapter, the articles, or the bylaws by a form of electronic communication consented to by the director to whom the notice is given is effective when given.
  - c. Consent by a director to notice given by electronic communication may be given in writing or by authenticated electronic communication.
    - (1) Any consent so given may be relied upon until revoked by the director.
    - (2) However, no revocation affects the validity of any notice given before a receipt of revocation of the consent.
4. If the date, time, and place of a board meeting have been provided in the articles or bylaws, or announced at a previous meeting of the board, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.
5. A director may waive notice of a meeting of the board. A waiver of notice by a director entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, by authenticated electronic communication, or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, except when the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection.

#### **10-19.1-44. Absent directors.**

If the articles or bylaws so provide, a director may give advance written consent or opposition to a proposal to be acted on at a board meeting. If the director is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition must be counted as the vote of a director present at the meeting in favor of or against the proposal and must be entered in the minutes or other record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the director has consented or objected.

**10-19.1-45. Quorum of directors.**

A majority, or a larger or smaller proportion or number provided in the articles or bylaws, of the directors currently holding office is a quorum for the transaction of business. In the absence of a quorum, a majority of the directors present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the directors present may continue to transact business until adjournment, even though the withdrawal of a number of directors originally present leaves less than the proportion or number otherwise required for a quorum.

**10-19.1-46. Act of the board.**

1. The board shall take action by the affirmative vote of the greater of a majority of the directors present at a duly held meeting at the time the action is taken, or a majority of the minimum proportion or number of directors that would constitute a quorum for the transaction of business at the meeting, except when this chapter or the articles require the affirmative vote of a larger proportion or number. If the articles require a larger proportion or number than is required by this chapter for a particular action, then the articles control.
2. The articles of a domestic corporation that is not incorporated under chapter 10-35 may confer upon one or more directors voting powers greater than or less than those of other directors.
  - a. After the adoption of the initial articles, an amendment to the articles to confer upon one or more directors voting powers greater than or less than those of other directors requires the approval of all of the shareholders entitled to vote on the amendment.
  - b. If the articles provide that any director has more or less than one vote on any matter, then:
    - (1) Every reference in this chapter to a majority or other proportion of the directors shall refer to a majority or other proportion of the voting power of the directors.
    - (2) Unless otherwise provided in the articles, the bylaws, or the resolution establishing the committee or the subcommittee, any such provision conferring greater or lesser voting power applies to voting in a committee or subcommittee.

**10-19.1-47. Action without meeting by directors.**

1. An action required or permitted to be taken at a board meeting may be taken by written action signed by all of the directors. If the articles so provide, any action, other than an action requiring shareholder approval, may be taken by written action signed, or consented to by authenticated electronic communication, by the number of directors that would be required to take the same action at a meeting of the board at which all directors were present.
2. The written action is effective when signed by, or consented to by authenticated electronic communication, the required number of directors, unless a different effective time is provided in the written action.
3. When written action is permitted to be taken by less than all directors, all directors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A director who does not sign or consent to the written action has no liability for the action or actions.

**10-19.1-48. Board committees.**

1. A resolution approved by the affirmative vote of a majority of the directors currently holding office may establish committees having the authority of the board in the management of the business of the corporation only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or

remedies of the corporation and whether those rights or remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board.

2. Committee members must be individuals. Unless the articles or bylaws provide for a different membership or manner of appointment, a committee must consist of one or more persons, who need not be directors, appointed by the board.
3. Sections 10-19.1-43, 10-19.1-44, and 10-19.1-45 apply to committees and members of committees to the same extent as those sections apply to the board and directors.
4. Minutes, if any, of committee meetings must be made available upon request to members of the committee and to any director.
5. The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a director with the standard of conduct set forth in section 10-19.1-50.
6. Committee members are deemed to be directors for purposes of sections 10-19.1-50, 10-19.1-51, and 10-19.1-91.
7. Unless otherwise provided in the articles, the bylaws, or the resolution of the board establishing the committee, a committee may create one or more subcommittees, each consisting of one or more members of the committee, and may delegate to a subcommittee any or all of the authority of the committee. In this chapter, unless the language or the context clearly indicates that a different meaning is intended:
  - a. Any reference to a committee is deemed to include a subcommittee; and
  - b. Any reference to a committee member is deemed to include a subcommittee member.

**10-19.1-49. Committee of disinterested persons.**

Repealed by S.L. 1993, ch. 54, § 107.

**10-19.1-50. Standard of conduct for directors.**

1. A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the corporation.
2. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:
  - a. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
  - b. Counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; or
  - c. A committee of the board upon which the director does not serve, duly established in accordance with section 10-19.1-48 as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.
3. Subsection 2 does not apply to a director who has knowledge concerning the matter in question that makes the reliance otherwise permitted by subsection 2 unwarranted.
4. A director who is present at a meeting of the board when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved, unless the director:
  - a. Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting, in which case the director shall not be considered to be present at the meeting for any purpose of this chapter;
  - b. Votes against the action at the meeting; or
  - c. Is prohibited from voting on the action:
    - (1) By the articles;

- (2) By the bylaws;
  - (3) As the result of a decision to approve, ratify, or authorize a transaction pursuant to section 10-19.1-51; or
  - (4) By a conflict of interest policy adopted by the board.
5. A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles. The articles may not eliminate or limit the liability of a director:
    - a. For any breach of the director's duty of loyalty to the corporation or its shareholders;
    - b. For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
    - c. Under section 10-19.1-95 or 10-04-17;
    - d. For any transaction from which the director derived an improper personal benefit; or
    - e. For any act or omission occurring prior to the date when the provision in the articles eliminating or limiting liability becomes effective.
  6. In discharging the duties of the position of director, a director may, in considering the best interests of the corporation, consider the interests of the corporation's employees, customers, suppliers, and creditors, the economy of the state and nation, community and societal considerations, and the long-term as well as the short-term interests of the corporation and its shareholders, including the possibility that these interests may be best served by the continued independence of the corporation.

**10-19.1-51. Director conflicts of interest.**

1. A contract or other transaction between a corporation and:
  - a. One or more of its directors or a member of the family of a director;
  - b. A director or governor of a related organization, or a member of the family of a director or governor of a related organization; or
  - c. An organization in or of which the corporation's director, or a member of the family of its director, is a director, officer, governor, manager, or representative or has a material financial interest,
 is not void or voidable because the director or the other individual or organization is a party or because the director is present at the meeting of the shareholders or the board or a committee at which the contract or transaction is authorized, approved, or ratified, if at least one of the requirements of subsection 2 is satisfied.
2. The contract or transaction described in subsection 1 is not void or voidable if:
  - a. The contract or transaction was, and the person asserting the validity of the contract or transaction was, fair and reasonable as to the corporation at the time it was authorized, approved, or ratified;
  - b. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the holders of all outstanding shares, whether or not entitled to vote, and the contract or transaction is approved in good faith by:
    - (1) The holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested director or directors; or
    - (2) The unanimous affirmative vote of the holder of all outstanding shares, whether or not entitled to vote;
  - c. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the directors or committee members currently holding office:
    - (1) However, the interested director or directors may not vote and are not considered for purposes of a quorum.

- (2) If as a result, the number of remaining directors is not sufficient to reach a quorum, then a quorum for the purpose of considering the contract or transaction is the number of remaining directors or committee members, not counting any vote that the interested director might otherwise have in, and not counting the director in determining the presence of a quorum; or
    - d. The contract or transaction is a distribution described in subsection 1 of section 10-19.1-92 or a merger or exchange described in subsection 1 or 2 of section 10-19.1-96.
3. For purposes of this section:
  - a. A director does not have a material financial interest in a resolution fixing the compensation of a director or fixing the compensation of another director as a director, officer, employee, or agent of the corporation, is not void or voidable or considered to be a contract or other transaction between a corporation even though the director receiving the compensation fixed by the resolution is present and voting at the meeting of the board or a committee at which the resolution is authorized, approved, or ratified, or even though other directors voting upon the resolution are also receiving compensation from the corporation;
  - b. A director has a material financial interest in each organization in which the director, or a member of the family of the director, has a material financial interest; and
  - c. A "member of the family" of a director is a spouse, parent, child, child of a spouse, brother, sister, or the spouse of any of these.
4. The procedures described under subdivisions a, b, and c of subsection 2 are not required if the contract or other transaction is between related organizations.

#### **10-19.1-52. Officers.**

1. The officers of a corporation must be individuals who are eighteen years of age or more, exercising the functions of the offices and:
  - a. Must consist of a president, a secretary, and a treasurer, however designated; and
  - b. May also include one or more vice presidents and any other officers, however designated, as may be provided in the bylaws.
2. Unless the articles or the bylaws provide that the shareholders with voting rights may elect the officers:
  - a. Each officer must be elected by the board at the time and in the manner as may be provided in the bylaws; or
  - b. To the extent authorized in the articles, the bylaws, or a resolution approved by the affirmative vote of a majority of the directors present, the president may appoint one or more officers, other than the treasurer.
3. Unless otherwise provided, president means chief executive officer and treasurer means chief financial officer.

#### **10-19.1-53. Duties of officers and agents.**

Unless the articles, bylaws, or a resolution adopted by the board and not inconsistent with the articles or bylaws, provides otherwise, the officers shall have the following duties:

1. The president shall:
  - a. Have general active management for the business of the corporation;
  - b. When present, preside at all meetings of the board and of shareholders;
  - c. See that all orders and resolutions of the board are carried into effect;
  - d. Sign and deliver in the name of the corporation any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the corporation, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or bylaws or by the board to some officer or agent of the corporation;
  - e. Maintain records of and, whenever necessary, certify all proceedings of the board and the shareholders; and

- f. Perform other duties prescribed by the board.
2. The vice president, if any, or, if there is more than one, the vice presidents in the order determined by the board, shall:
  - a. In the absence or disability of the president, perform the duties and exercise the powers of the president; and
  - b. Shall perform other duties and shall have other powers as the board may from time to time prescribe.
3. The treasurer shall:
  - a. Keep accurate financial records for the corporation;
  - b. Deposit all money, drafts, and checks in the name of and to the credit of the corporation in the banks and depositories designated by the board;
  - c. Endorse for deposit all notes, checks, and drafts received by the corporation as ordered by the board, making proper vouchers;
  - d. Disburse corporate funds and issue checks and drafts in the name of the corporation, as ordered by the board;
  - e. Give to the president and the board, whenever requested, an account of all transactions by the treasurer and of the financial condition of the corporation; and
  - f. Perform other duties prescribed by the board or by the president.
4. The secretary shall:
  - a. Attend all meetings of the board, all meetings of the shareholders, and when required, all meetings of standing committees;
  - b. Record all proceedings of the meetings;
  - c. Give, or cause to be given, notice of all meetings of the shareholders and meetings of the board; and
  - d. Perform other duties prescribed by the board.
5. All other officers and agents of the corporation, as between themselves and the corporation, have the authority and shall perform the duties in the management of the corporation as may be provided in the articles or bylaws, or as may be determined by resolution of the board not inconsistent with the articles and bylaws.

**10-19.1-54. Other officers.**

Repealed by S.L. 1997, ch. 103, § 248.

**10-19.1-55. Multiple offices.**

Any number of offices or functions of those offices may be held or exercised by the same individual. If a record must be signed by individuals holding different offices or functions and an individual holds or exercises more than one of those offices or functions, that individual may sign the record in more than one capacity, but only if the record indicates each capacity in which the individual signs.

**10-19.1-56. Officers deemed elected.**

In the absence of an election or appointment of officers by the board, the individual or individuals exercising the functions of the principal officers of the corporation are deemed to have been elected to those offices.

**10-19.1-57. Contract rights.**

The election or appointment of an individual as an officer or agent does not, of itself, create contract rights. However, a corporation may enter into a contract with an officer or agent. The resignation or removal of an officer or agent is without prejudice to any contractual rights or obligations. The fact that the contract may be for a term that is longer than the terms of the directors who authorized or approved the contract does not make the contract void or voidable.

**10-19.1-58. Resignation, removal, and vacancies for officers.**

1. An officer may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective date is specified in the notice.
2. With respect to removal:
  - a. Except as otherwise provided in the articles and bylaws, an officer may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the directors present, subject to the provisions of a shareholder control agreement.
  - b. An officer appointed by the president also may be removed at any time, with or without cause, by the president.
  - c. To the extent authorized in the articles, the bylaws, or a resolution approved by the affirmative vote of a majority of the directors present, the president may remove an officer elected or appointed by the board, other than the treasurer.
  - d. The articles or the bylaws may provide other manners of removing an officer.
  - e. A removal as described in this subsection is without prejudice to any contractual rights of the officer.
3. A vacancy in an office because of death, resignation, removal, disqualification, or other cause may, or in the case of the president or treasurer must, be filled for the unexpired portion of the term in the manner provided in the articles or bylaws, or determined by the board, or pursuant to section 10-19.1-56.

**10-19.1-59. Delegation by officers.**

Unless prohibited by the articles or bylaws or by a resolution adopted by the board, an officer elected or appointed by the board may, without the approval of the board, delegate some or all of the duties and powers of an office to other individuals. An officer who delegates the duties or powers of an office remains subject to the standard of conduct for an officer with respect to the discharge of all duties and powers so delegated.

**10-19.1-60. Standard of conduct for officers.**

An officer shall discharge the duties of an office in good faith, in a manner the officer reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. An individual exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated pursuant to section 10-19.1-59 is deemed an officer for purposes of this section and sections 10-19.1-86 and 10-19.1-91.

**10-19.1-61. Authorized shares.**

1. Subject to any restrictions in the articles, a corporation may issue securities and rights to purchase securities only when authorized by the board.
2. All shares of a corporation:
  - a. Must be of one class and one series, unless the articles establish or authorize the board to establish more than one class or series;
  - b. Must be common shares entitled to vote and have equal rights and preferences in all matters not otherwise provided for by the board, unless and to the extent the articles have created nonvoting shares or have fixed the relative rights and preferences of different classes and series; and
  - c. Must have, unless a different par value is specified in the articles, a par value of one cent per share.
3. Subject to any restrictions in the articles, the power granted in subsection 2 may be exercised by a resolution approved by the directors as required under section 10-19.1-46 establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series.
4. A statement executed by an officer setting forth the name of the corporation and the text of the resolution and certifying the adoption of the resolution and the date of



adoption must be filed with the secretary of state, together with the fees provided under section 10-19.1-147, before the issuance of any shares for which the resolution creates rights or preferences not set forth in the articles. The resolution is effective when the statement is filed with the secretary of state unless the statement specifies a later effective date within thirty days of filing the statement with the secretary of state.

5. Without limiting the authority granted under this section, a corporation may issue shares of a class or series which:
  - a. Are subject to the right of the corporation to redeem any of those shares at the price fixed for the shares' redemption by the articles or by the board;
  - b. Entitle the shareholders to cumulative, partially cumulative, or noncumulative distributions;
  - c. Have preference over any class or series of shares for the payment of distributions of any or all kinds;
  - d. Convert into shares of any other class or any series of the same or another class; or
  - e. Have full, partial, or no voting rights, except as provided under section 10-19.1-20.

**10-19.1-61.1. Share dividends, divisions, and combinations.**

1. A corporation may effect a share dividend or a division or combination of its shares as provided in this section.
2. Articles of amendment must be adopted by the board and the shareholders under section 10-19.1-19 and, if required, section 10-19.1-20 to effect a division or combination if, as a result of the proposed division or combination:
  - a. The rights or preferences of the holders of outstanding shares of any class or series will be adversely affected; or
  - b. The percentage of authorized shares of any class or series remaining unissued after the division or combination will exceed the percentage of authorized shares of that class or series that were unissued before the division or combination.
3. If a division or combination is effected under this section, articles of amendment must be prepared that contain the information required by section 10-19.1-21.
4. Subject to the restrictions provided in subsections 2 and 3 or any restrictions in the articles that state that this subsection does not apply, a share dividend, division, or combination may be effected by action of the board alone, without the approval of shareholders under sections 10-19.1-19 and 10-19.1-20. In effecting a division or combination under this subsection, the board may amend the articles to increase or decrease the par value of shares, increase or decrease the number of authorized shares, and make any other change necessary or appropriate to assure that the rights or preferences of the holders of outstanding shares of any class or series will not be adversely affected by the division or combination.
5. If a division or combination that includes an amendment of the articles is effected under subsection 4, articles of amendment must be prepared that contain the information required by section 10-19.1-21 and a statement that the amendment will not adversely affect any right or preference of any holder of outstanding shares of any class or series and will not result in the percentage of authorized shares of any class or series which remains unissued after the division or combination exceeding the percentage of authorized shares of that class or series which were unissued before the division or combination.
6. For purposes of this section, an increase or decrease in the relative voting rights of the shares that are the subject of the division or combination that arises solely from the increase or decrease in the number of shares outstanding is not an adverse effect on the outstanding shares of any class or series and any increase in the percentage of authorized shares remaining unissued arising solely from the elimination of fractional shares under section 10-19.1-68 must be disregarded.

#### **10-19.1-62. Subscriptions for shares.**

1. A subscription for shares, whether made before or after the incorporation of a corporation, is not enforceable against the subscriber unless it is in writing and signed by the subscriber.
2. Unless otherwise provided in the subscription agreement, or unless all of the subscribers and, if in existence, the corporation consents to a shorter or longer period, a subscription for shares is irrevocable for a period of six months.
3. A subscription for shares, whether made before or after the incorporation of a corporation, shall be paid in full at the time or times, or in the installments, if any, specified in the subscription agreement. In the absence of a provision in the subscription agreement specifying the time at which the subscription is to be paid, the subscription shall be paid at the time or times determined by the board, but a call made by the board for payment on subscriptions shall be uniform for all shares of the same class or for all shares of the same series.
4. Unless otherwise provided in the subscription agreement, in the event of default in the payment of an installment or call when due, the corporation may proceed to collect the amount due in the same manner as a debt due the corporation.
5. If the amount due on a subscription for shares remains unpaid for a period of twenty days after written notice of demand for payment has been given to the delinquent subscriber, the shares subscribed for may be offered for sale by the corporation for a price in money equaling or exceeding the sum of the full balance owed by the delinquent subscriber plus the expenses incidental to the sale. If the shares subscribed for are sold pursuant to this subsection, the corporation shall pay to the delinquent subscriber or to the delinquent subscriber's legal representative the lesser of:
  - a. The excess of net proceeds realized by the corporation over the sum of the amount owed by the delinquent subscriber plus the expenses incidental to the sale; and
  - b. The amount actually paid by the delinquent subscriber.If the shares subscribed for are not sold pursuant to this subsection, the corporation may collect the amount due in the same manner as a debt due the corporation or cancel the subscription in accordance with subsection 6.
6. If the amount due on a subscription for shares remains unpaid for a period of twenty days after written notice of demand for payment has been given to the delinquent subscriber and the shares subscribed for by the delinquent subscriber have not been sold pursuant to subsection 5, the corporation may cancel the subscription, in which event the shares subscribed for must be restored to the status of authorized but unissued shares, the corporation may retain the portion of the subscription price actually paid that does not exceed ten percent of the subscription price, and the corporation shall refund to the delinquent subscriber or the delinquent subscriber's legal representative that portion of the subscription price actually paid which exceeds ten percent of the subscription price.

#### **10-19.1-63. Consideration for shares - Value and payment - Liability.**

1. Consideration for the issuance of shares may be paid, in whole or in part, in money; in other property, tangible or intangible; or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued is received by the corporation, the shares are considered fully paid and nonassessable. Neither promissory notes nor future services constitute payment or part payment for shares of a corporation.
2. Subject to any restrictions in the articles, a corporation may, without any new or additional consideration, issue its own shares in exchange for or in conversion of its outstanding shares, or, subject to authorization of share dividends, divisions, and combinations according to section 10-19.1-61.1, issue its own shares pro rata to shareholders or the shareholders of one or more classes or series, to effectuate share dividends, divisions, or combinations. No shares of a class or series, shares of which

- are then outstanding, shall be issued to the holders of shares of another class or series, except in exchange for or in conversion of outstanding shares of the other class or series, unless the issuance is expressly provided for in the articles or is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares of the same class or series as the shares to be issued.
3. The determinations of the board or the shareholders as to the amount or fair value or the fairness to the corporation of the consideration received or to be received by the corporation for its shares or the terms of payment, as well as the agreement to issue shares for that consideration, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances. Unless otherwise required by the articles, the consideration may be less than the par value, if any, of the shares. Directors or shareholders who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving an issue of shares for a consideration that is unfair to the corporation, or overvalue property received or to be received by the corporation as consideration for shares issued, are jointly and severally liable to the corporation for the benefit of the then shareholders who did not consent to and are damaged by the action, to the extent of the damages of those shareholders. A director or shareholder against whom a claim is asserted pursuant to this subsection, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other directors or shareholders who are liable under this section.
  4. A corporation may issue only shares that are nonassessable or that are assessable but are issued with the unanimous consent of the shareholders. "Nonassessable" shares are shares for which the agreed consideration has been fully paid, delivered, or rendered to the corporation.
    - a. The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by the corporation out of the consideration received by it in payment for its shares without rendering the shares not fully paid and nonassessable.
    - b. If shares are issued in violation of this subsection, then the following persons are jointly and severally liable to the corporation for the difference between the agreed consideration for the shares and the consideration actually received by the corporation:
      - (1) A director or shareholder who was present and entitled to vote but who failed to vote against the issuance of the shares knowing of the violation;
      - (2) The person to whom the shares were issued; and
      - (3) A successor or transferee of the interest in the corporation of a person described in paragraph 1 or 2, including a purchaser of shares, a subsequent assignee, successor, or transferee, a pledgee, a holder of any other security interest in the assets of the corporation or shares granted by the person described in paragraph 1 or 2, or a legal representative of or for the person or estate of the person, which successor, transferee, purchaser, assignee, pledgee, holder, or representative acquired the interest knowing of the violation.
  5. A pledgee or holder of any other security interest in all or any shares that have been issued in violation of subsection 4 is not liable under subdivision b of subsection 4 if all those shares are surrendered to the corporation. The surrender does not impair any rights of the pledgee or holder of any other security interest against the pledgor or person granting the security interest.
  6. A pledgee, holder of any other security interest, or legal representative is liable under subdivision b of subsection 4 only in that capacity. The liability of the person under subdivision a of subsection 4 is limited to the assets held in that capacity for the person or estate of the person described in paragraph 1 or 2 of subdivision b of subsection 4.

7. Each person liable under subdivision b of subsection 4 has a full right of contribution on an equitable basis from all other persons liable under that subdivision for the same transaction.
8. An action may not be maintained against a person under subdivision b of subsection 4 unless commenced within two years from the date on which shares are issued in violation of subsection 4.

**10-19.1-64. Rights to purchase.**

1. "Right to purchase" means the right, however designated, pursuant to the terms of a security or agreement, entitling a person to subscribe to, purchase, or acquire securities of a corporation, whether by the exchange or conversion of other securities, or by the exercise of options, warrants, or other rights, or otherwise, but excluding pre-emptive rights.
2. Rights to purchase may be either transferable or nontransferable and either separable or inseparable from other securities of the corporation, as the board may determine under this section.
3. A corporation may issue rights to purchase after the terms, provisions, and conditions of the rights to purchase to be issued, including the conversion basis or the price at which securities may be purchased or subscribed for, are fixed by the board or by an officer pursuant to board authorization, subject to any restrictions in the articles.
4. The instrument or written agreement evidencing the right to purchase must set forth in full, summarize, or incorporate by reference all the terms, provisions, and conditions applicable to the right to purchase.

**10-19.1-65. Pre-emptive rights.**

1. Unless denied or limited in the articles or by the board pursuant to subdivision b of subsection 2 of section 10-19.1-61, a shareholder of a corporation has the pre-emptive rights provided in this section.
2. A pre-emptive right is the right of a shareholder to acquire a certain fraction of the unissued securities or rights to purchase securities of a corporation before the corporation may offer them to other persons.
3. A shareholder has a pre-emptive right whenever the corporation proposes to issue new or additional shares or rights to purchase shares of the same class or series as the series held by the shareholder or, if a class of shares has no series, the same class as the class held by the shareholder, new or additional securities other than shares, or rights to purchase securities other than shares, that are exchangeable for, convertible into, or carry a right to acquire new or additional shares of the same class or series as those held by the shareholder or, if a class of shares has no series, the same class as the class held by the shareholder.
4. Unless otherwise provided in the articles, a shareholder does not have a pre-emptive right pursuant to this section to acquire securities or rights to purchase securities that are:
  - a. Issued for a consideration other than money;
  - b. Issued pursuant to a plan of merger or exchange;
  - c. Issued pursuant to an employee or incentive benefit plan approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote;
  - d. Issued upon exercise of previously issued rights to purchase securities of the corporation;
  - e. Issued pursuant to a public offering of the corporation's securities or rights to purchase securities. For purposes of this subdivision, "public offering" means an offering of the corporation's securities or rights to purchase securities if the resale or other distribution of those securities or rights to purchase securities is not restricted by either state or federal securities laws; or
  - f. Issued pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a statute of this state or of the United States.

5. The fraction of the new issue that each shareholder may acquire by exercise of a pre-emptive right is the ratio that the number of shares of that class or series owned by the shareholder before the new issue bears to the total number of shares of that class or series issued and outstanding before the new issue.
6. A shareholder may waive a pre-emptive right in writing. The waiver is binding upon the shareholder whether or not consideration has been given for the waiver. Unless otherwise provided in the waiver, a waiver of pre-emptive rights is effective only for the proposed issuance described in the waiver.
7. When proposing the issuance of securities with respect to which shareholders have pre-emptive rights under this section, the board shall cause notice to be given to each shareholder entitled to pre-emptive rights. The notice must be given at least ten days before the date by which the shareholder must exercise a pre-emptive right and must contain:
  - a. The number or amount of securities with respect to which the shareholder has a pre-emptive right and the method used to determine that number or amount;
  - b. The price and other terms and conditions upon which the shareholder may purchase them; and
  - c. The time within which and the method by which the shareholder must exercise the right.
8. Securities that are subject to pre-emptive rights but not acquired by shareholders in the exercise of those rights may, for a period not exceeding one year after the date fixed by the board for the exercise of those pre-emptive rights, be issued to persons the board determines, at a price not less than, and on terms no more favorable to the purchaser than, those offered to the shareholders. Securities that are not issued during that one-year period shall, at the expiration of the period, again become subject to pre-emptive rights of shareholders.
9. If the shareholders of a corporation are entitled to cumulative voting in the election of directors, no amendment to the articles which has the effect of denying, limiting, or modifying the pre-emptive rights provided in this section may be adopted if the votes of a proportion of the voting power sufficient to elect a director at an election of the entire board under cumulative voting are cast against the amendment.
10. A denial or limitation of pre-emptive rights otherwise provided under this section does not limit the power of the corporation to grant first refusal rights or other rights to purchase from the corporation shares or other securities of the corporation to shareholders, subscribers, or other persons before the shares or other securities are offered to or acquired by any other person.

**10-19.1-66. Share certificates - Issuance and contents - Uncertificated shares.**

1. The shares of a corporation must be certificated shares or uncertificated shares. Each holder of certificated shares issued in compliance with section 10-19.1-63 is entitled to a certificate of shares.
2. The shares of a corporation must be represented by certificates signed by the president or a vice president, and by the secretary, or by an assistant secretary of the corporation.
3. If a person signs or has a facsimile signature placed upon a certificate while an officer, transfer agent, or registrar of a corporation, the certificate may be issued by the corporation even if the person ceases having that capacity before the certificate is issued, with the same effect as if the person had that capacity at the date of the certificate's issue.
4. Every certificate representing shares issued by a corporation that is authorized to issue shares of more than one class must set forth upon the face or back of the certificate, or must state that the corporation will furnish to any shareholders upon request and without charge, a full or summary statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued and, if the corporation is authorized to issue any preferred or special class or series, the variations in the relative rights and preferences between the shares of each

of the series to the extent the relative rights and preferences have been fixed and determined and the authority of the board to fix and determine the relative rights and preferences of subsequent series. Each certificate representing shares must state upon its face:

- a. The name of the corporation.
  - b. That the corporation is organized under the laws of this state.
  - c. The name of the person to whom issued.
  - d. The number and class of shares and the designation of the series, if any, the certificate represents.
  - e. The par value of any share represented by the certificate or a statement the shares are without par value.
5. A certificate signed as provided under subsection 1 is prima facie evidence of the ownership of the shares referred to in the certificate.
6. Unless uncertificated shares are prohibited by the articles or bylaws, a corporation may provide that some or all of any or all classes and series of the corporation's shares will be uncertificated shares.
- a. The action by the corporation provided in this subsection does not apply to shares represented by a certificate until the certificate is surrendered to the corporation.
  - b. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall give to the new shareholder the information required by this section to be stated on certificates.
  - c. The information required under this section is not required to be given to the new shareholder by a publicly held corporation that adopted a system of issuance, recordation, and transfer of the corporation's shares by electronic or other means not involving the issuance of certificates if the system complies with federal law.
  - d. Except as otherwise expressly provided by statute, the rights and obligations of the holders of certificated and uncertificated shares of the same class and series are identical.

**10-19.1-67. Lost share certificates - Replacement.**

1. A new share certificate may be issued pursuant to section 41-08-38 in place of one that is alleged to have been lost, stolen, or destroyed.
2. The issuance of a new certificate under this section does not constitute an overissue of the shares it represents.

**10-19.1-68. Fractional shares.**

1. A corporation may issue fractions of a share originally or upon transfer. If it does not issue fractions of a share, then it shall in connection with an original issuance of shares:
  - a. Arrange for the disposition of fractional interests by those entitled to them;
  - b. Pay in money the fair value of fractions of a share as of the time when persons entitled to receive the fractions are determined; or
  - c. Issue scrip or warrants in registered or bearer form that entitle the holder to receive a certificate for a full share upon the surrender of the scrip or warrants aggregating a full share.
2. A corporation may not pay money for fractional shares if that action would result in the cancellation of more than twenty percent of the outstanding shares of a class or series. A determination by the board of the fair value of fractions of a share is conclusive in the absence of fraud. A certificated or uncertificated fractional share, and any scrip or warrants if expressly provided, entitles the shareholder to exercise voting rights or receive distributions. The board may cause scrip or warrants to be issued subject to the condition the scrip or warrants become void if not exchanged for full shares before a specified date, or that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds distributed to the holder of the scrip or warrants, or to any other condition or set of conditions the board may impose.

**10-19.1-69. Liability of subscribers and shareholders with respect to shares.**

1. A holder of or subscriber for shares of a corporation is under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration of which such shares were issued or to be issued. As such, a shareholder is not personally liable for the acts or debts of the corporation.
2. Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefore has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.
3. A personal representative, conservator, guardian, trustee, assignee for the benefit of creditors, or a receiver is not personally liable to the corporation as a holder of or subscriber for shares of a corporation but the estate and funds in said person's hands are liable.
4. No pledgee or other holder of shares as collateral security is personally liable as a shareholder.

**10-19.1-70. Restriction on transfer or registration of securities.**

1. A restriction on the transfer or registration of transfer of securities of a corporation may be imposed in the articles, in the bylaws, by a resolution adopted by the shareholders, or by an agreement among or other written action by a number of shareholders or holders of other securities or among them and the corporation. A restriction is not binding with respect to securities issued prior to the adoption of the restriction, unless the holders of those securities are parties to the agreement or voted in favor of the restriction.
2. A written restriction on the transfer or registration of transfer of securities of a corporation which is not manifestly unreasonable under the circumstances and is noted conspicuously on the face or back of the certificate or included in information sent to the holders of uncertificated shares in accordance with subsection 6 of section 10-19.1-66 is valid and specifically enforceable against the holder of the restricted securities or a successor or transferee of the holder, including a pledgee or a legal representative.
  - a. Unless noted conspicuously on the face or back of the certificate or included in information sent to holders of uncertificated shares in accordance with subsection 6 of section 10-19.1-66, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction.
  - b. A restriction under this section is deemed to be noted conspicuously and is effective if the existence of the restriction is stated on the certificate and reference is made to a separate record creating or describing the restriction.

**10-19.1-71. Regular meetings of shareholders.**

1. Regular meetings of shareholders may be held on an annual or other less frequent periodic basis but need not be held unless required by the articles or bylaws or by subsection 2.
2. If a regular meeting of shareholders has not been held during the earlier of six months after the fiscal yearend of the corporation or fifteen months after its last meeting:
  - a. A shareholder or shareholders holding five percent or more of the voting power of all shares entitled to vote may demand a regular meeting of shareholders by written notice of demand given to the president or secretary of the corporation.
  - b. Within thirty days after receipt of the demand by one of those officers, the board shall cause a regular meeting of shareholders to be called and held at the expense of the corporation on notice no later than ninety days after receipt of the demand.
  - c. If the board fails to cause a regular meeting to be called as required by this subsection, the shareholders making the demand may call the meeting by giving notice as required by section 10-19.1-73.

- d. All necessary expenses of the notice and the meeting must be paid by the corporation.
3. A regular meeting, if any, must be held on the date and at the time and place fixed by, or in a manner authorized by, the articles or bylaws, except that a meeting called by or at the demand of a shareholder pursuant to subsection 2 must be held in the county where the principal executive office of the corporation is located. To the extent authorized by the articles or bylaws, the board may determine that a regular meeting of the shareholders shall be held solely by means of remote communication in accordance with subsection 3 of section 10-19.1-75.2.
4. At each regular meeting of shareholders:
  - a. There must be an election of qualified successors for directors who serve for an indefinite term or whose terms have expired or are due to expire within six months after the date of the meeting.
  - b. No other particular business is required to be transacted.
  - c. Any business appropriate for action by the shareholders may be transacted.
5. Failure to hold a meeting in accordance with the articles or bylaws does not affect the validity of a corporate action.

**10-19.1-72. Special meetings of shareholders.**

1. Special meetings of the shareholders may be called for any purpose or purposes at any time, by:
  - a. The president;
  - b. Two or more directors;
  - c. A person authorized in the articles or bylaws to call special meetings; or
  - d. A shareholder or shareholders holding ten percent or more of the voting power of all shares entitled to vote, except that a special meeting for the purpose of considering any action to directly or indirectly facilitate or effect a business combination, including any action to change or otherwise affect the composition of the board of directors for that purpose, must be called by twenty-five percent or more of the voting power of all shares entitled to vote.
2. A shareholder or shareholders holding the voting power specified in subdivision d of subsection 1 may demand a special meeting of shareholders by written notice of demand given to the president or secretary of the corporation and containing the purposes of the meeting.
  - a. Within thirty days after receipt by one of those officers of the demand, the board shall cause a special meeting of shareholders to be called and held on notice no later than ninety days after receipt of the demand.
  - b. If the board fails to cause a special meeting to be called as required by this subsection, the shareholder or shareholders making the demand may call the special meeting by giving notice as required by section 10-19.1-73.
  - c. All necessary expenses of the notice and the meeting shall be paid by the corporation.
3. Special meetings must be held on the date and at the time and place fixed by the president, the board, or a person authorized by the articles or bylaws to call a meeting, except that a special meeting called by or at the demand of a shareholder or shareholders pursuant to subsection 2 must be held in the county where the principal executive office is located. To the extent authorized by the articles or bylaws, the board may determine that a special meeting of the shareholders shall be held solely by means of remote communication in accordance with subsection 3 of section 10-19.1-75.2.
4. The business transacted at a special meeting is limited to the purposes stated in the notice of the meeting. Any business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the corporation, unless all of the shareholders have waived notice of the meeting in accordance with subsection 4 of section 10-19.1-73.



**10-19.1-72.1. Court-ordered meeting of shareholders.**

1. The district court of the county where the principal executive office of a corporation is located may order a meeting to be held:
  - a. On application of a shareholder or shareholders holding five percent or more of the voting power of all shares entitled to vote, if a meeting was not held within the earlier of:
    - (1) Six months after the fiscal yearend of the corporation; or
    - (2) Fifteen months after its last meeting; or
  - b. On application of a voting shareholder who signed a demand for a special meeting valid under section 10-19.1-72 or a person entitled to call a special meeting if:
    - (1) Notice of the special meeting was not given within thirty days after the date the demand was delivered to a corporate officer; or
    - (2) The special meeting was not held in accordance with the notice.
2. The court may:
  - a. Fix the time and place of the meeting;
  - b. Specify a record date for determining shareholders entitled to notice of and to vote at the meeting;
  - c. Prescribe the form and content of the meeting notice;
  - d. 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
  - e. Enter other orders necessary to accomplish the purposes of the meeting.
3. If the court orders a meeting it may also order the corporation to pay the costs of the shareholder, including reasonable attorney's fees, incurred to obtain the order.

**10-19.1-73. Notice of shareholder meetings.**

1. Except as otherwise provided in this chapter, notice of all meetings of shareholders must be given to every holder of shares entitled to vote unless:
  - a. The meeting is an adjourned meeting to be held not more than one hundred twenty days after the date fixed for the original meeting and the date, time, and place of the meeting were announced at the time of the original meeting or any adjournment of the original meeting; or
  - b. The following have been mailed by first-class mail to a shareholder at the address in the corporate records and returned nondeliverable:
    - (1) Two consecutive regular meeting notices and notices of any special meetings held during the period between the two regular meetings; or
    - (2) All payments of distributions, provided there were at least two sent during a twelve-month period.An action or meeting that is taken or held without notice under this subdivision has the same force and effect as if notice was given. If the shareholder delivers a written notice of the shareholder's current address to the corporation, the notice requirement is reinstated.
2. If notice of an adjourned meeting is required under subdivision a of subsection 1, then the date for determination of shares entitled to notice of and entitled to vote at the adjourned meeting must comply with subsection 1 of section 10-19.1-73.2, except that if the date of the meeting is set by court order, the court may provide that the original date of determination will continue in effect or may fix a new date.
3. The notice:
  - a. If a specific minimum notice period has not otherwise been fixed by law, must be given at least ten days before the date of the meeting, or a shorter time provided in the articles or bylaws, and not more than fifty days before the date of the meeting;
  - b. Must contain the date, time, and place of the meeting;
  - c. Must contain the information with respect to dissenters' rights required by subsection 2 of section 10-19.1-88, if applicable;

- d. Must inform shareholders if proxies are permitted at the meeting and, if so, state the procedure for appointing proxies;
  - e. Must contain a statement of the purpose of the meeting, in the case of a special meeting;
  - f. Must contain any other information:
    - (1) Required by the articles or bylaws, or this chapter; or
    - (2) Considered necessary or desirable by the board of directors; and
  - g. May contain any other information considered necessary or desirable by the person or persons calling the meeting.
4. A shareholder may waive notice of a meeting of shareholders.
- a. A waiver of notice by a shareholder entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, or by attendance.
  - b. Attendance by a shareholder at a meeting is a waiver of notice of that meeting, except when the shareholder objects:
    - (1) At the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened; or
    - (2) Before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

**10-19.1-73.1. Electronic communications.**

Repealed by S.L. 1997, ch. 103, § 248.

**10-19.1-73.2. Voting rights.**

1. The board may fix or authorize an officer to fix a date not more than fifty days, or a shorter time period provided in the articles or bylaws, before the date of a meeting of shareholders as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting. If a date is fixed, only shareholders on that date are entitled to notice of and permitted to vote at that meeting of shareholders.
2. A determination of the holders of shares entitled to notice and to vote at a meeting of shareholders is effective for an adjournment of the meeting unless the board fixes a new date for determining the right to notice and to vote, which it must do if the meeting is adjourned to a date more than fifty days after the record date for determining shareholders entitled to notice of the original meeting.
3. If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may:
  - a. Maintain the original record date for notice and voting; or
  - b. Fix a new record date for notice and voting.
4. A resolution approved by the affirmative vote of a majority of the directors present may establish a procedure whereby a shareholder may certify in writing to the corporation that all or a portion of the shares registered in the name of the shareholder are held for the account of one or more beneficial owners. Upon receipt by the corporation of the writing, the persons specified as beneficial owners, rather than the actual shareholder, are deemed the shareholders for the purposes specified in the writing.
5. Unless otherwise provided in the articles or bylaws, or in the terms of the shares, a shareholder has one vote for each share held.
6. The articles may give or prescribe the manner of giving a creditor, securityholder, or other person a right to vote under this section.
7. Shares owned by two or more shareholders may be voted by any one of them unless the corporation receives written notice from any one of them denying the authority of that person to vote those shares.
8. Except as provided in subsection 7, a holder of shares entitled to vote may vote any portion of the shares in any way the shareholder chooses. If a shareholder votes without designating the proportion or number of shares voted in a particular way, the shareholder is deemed to have voted all of the shares in that way.

### **10-19.1-73.3. Voting list.**

1. After fixing a record date for notice of and voting at a meeting, a corporation shall prepare an alphabetical or numerical list of the identities of all its shareholders entitled to notice and to vote. The list must show:
  - a. The number of shares each shareholder is entitled to vote at the meeting;
  - b. Each shareholder's physical mailing address, if the identity of a shareholder on the list consists of the shareholder's name; and
  - c. Each shareholder's authorized means of receipt for electronic transmissions, if the identity of a shareholder on the list consists of the shareholder's data address.
2. The list of shareholders must be available for inspection by a shareholder with voting rights for the purpose of communication with other shareholders concerning the meeting, beginning two business days after the meeting notice is given and continuing through the meeting, at the principal executive office of the corporation or at a reasonable place identified in the meeting notice in the city where the meeting will be held.
  - a. The list must also be available at the meeting.
  - b. A shareholder or a shareholder's agent or attorney is entitled on written demand to inspect and to copy the list, at a reasonable time and at the shareholder's expense, during the period it is available for inspection and at any time during the meeting or an adjournment.
3. If the corporation refuses to allow a shareholder with voting rights, or the shareholder's agent or attorney, to inspect the list of shareholders before or at the meeting, the district court of the county where the principal executive office of the corporation is located, on application of the shareholder, may:
  - a. Order the inspection or copying at the corporation's expense;
  - b. Postpone the meeting until the inspection or copying is complete; or
  - c. Order the corporation to pay the shareholder's costs, including reasonable attorney's fees, incurred to obtain the order.
4. Unless a written demand to inspect and copy a shareholder list has been made under subsection 2 before the shareholder meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.
5. A shareholder or a shareholder's agent or attorney who gains access to a shareholder list under this section may not use or give it to another for use of the shareholder list for any purpose other than a proper purpose. Upon application of the corporation, the district court may issue a protective order or order other relief necessary to enforce this subsection.

### **10-19.1-74. Act of the shareholders.**

1. Unless this chapter or the articles require a greater vote or voting by class and except for the election of directors which is governed by section 10-19.1-39, the shareholders shall take action by the affirmative vote of the holders of the greater of:
  - a. A majority of the voting power of the shares present and entitled to vote on that item of business; or
  - b. A majority of the voting power of the minimum number of shares entitled to vote that would constitute a quorum for the transaction of business at the meeting.If the articles require a larger proportion or number than is required by this chapter for a particular action, then the articles control.
2. In any case when a class or series of shares is entitled by this chapter, the articles of incorporation, or the terms of the shares to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the owners of the same proportion of the shares as is required as provided in subsection 1, unless the articles of incorporation require a larger proportion. Unless otherwise stated in the articles or the bylaws in the case of voting as a class or series, the minimum percentage of the total voting power of shares of the class or series that must be present is equal to the

minimum percentage of all shares entitled to vote required to be present under section 10-19.1-76.

3. Unless otherwise provided in the articles or bylaws, shareholders may take action at a meeting by:
  - a. Voice or ballot;
  - b. Action without a meeting pursuant to section 10-19.1-75;
  - c. Ballot pursuant to section 10-19.1-75.1; or
  - d. Remote communication pursuant to section 10-19.1-75.2.

**10-19.1-74.1. Contractual requirement to submit matter to shareholders.**

A corporation may agree to submit a matter to its shareholders whether or not the board determines, at any time after approving the matter, that the matter is no longer advisable and recommends that the shareholders reject it.

**10-19.1-75. Shareholder action without a meeting.**

An action required or permitted to be taken at a meeting of the shareholders may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, by all of the shareholders entitled to vote on that action.

1. If the articles so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the shareholders who own voting power equal to the voting power that would be required to take the same action at a meeting of the shareholders at which all shareholders were present. However, in no event may written action be taken by holders of less than a majority of the voting power of all shares entitled to vote on that action.
  - a. After the adoption of the initial articles, an amendment to the articles to permit written action to be taken by less than all shareholders requires the approval of all of the shareholders entitled to vote on the amendment.
  - b. When written action is permitted to be taken by less than all shareholders, all shareholders must be notified of its text and effective date no later than five days after the date on which the action is taken.
  - c. Failure to provide the notice does not invalidate the written action.
  - d. A shareholder who does not sign or consent to the written action has no liability for the action or actions taken by the written actions.
2. The written action is effective when it has been signed, or consented to by authenticated electronic communication, by the required shareholders, unless a different effective time is provided in the written action.
3. When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the officers signing the certificate must so indicate if the action was taken under this section.

**10-19.1-75.1. Shareholder action by ballot.**

1. Except as provided in subsection 5 and unless prohibited or limited by the articles or bylaws, an action that may be taken at a regular or special meeting of shareholders may be taken without a meeting if the corporation mails or delivers a ballot to every shareholder entitled to vote on the matter.
2. A ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action.
3. Approval by ballot under this section is valid only if:
  - a. The number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and
  - b. 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 total number of votes cast was the same as the number of votes cast by ballot.
4. Solicitations for votes by ballot must:
  - a. Indicate the number of responses needed to meet the quorum requirements;

- b. State the percentage of approvals necessary to approve each matter other than election of directors; and
  - c. Specify the time by which a ballot must be received by the corporation in order to be counted.
5. Except as otherwise provided in the articles or bylaws, a ballot may not be revoked.
6. With respect to a ballot by electronic communication:
- a. A corporation may deliver a ballot by electronic communication only if the corporation complies with subsection 4 of section 10-19.1-75.2 as if the ballot were a notice.
  - b. Consent by a shareholder to receive notice by electronic communication in a certain manner constitutes consent to receive a ballot by electronic communication in the same manner.

**10-19.1-75.2. Remote communications for shareholder meetings.**

- 1. This section shall be construed and applied to:
  - a. Facilitate remote communication consistent with other applicable law; and
  - b. Be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.
- 2. To the extent authorized in the articles or the bylaws and determined by the board:
  - a. A meeting of the shareholders may be held solely by any combination of means of remote communication through which the participants may participate in the meeting:
    - (1) If notice of the meeting is given to every holder of shares entitled to vote as would be required by this chapter for a meeting; and
    - (2) If the number of shares held by the shareholders participating in the meeting would be sufficient to constitute a quorum at a meeting.
  - b. A shareholder not physically present in person or by proxy at a regular or special meeting of shareholders may participate by means of remote communication in a meeting of shareholders held at a designated place.
- 3. In any meeting of shareholders held solely by means of remote communication under subdivision a of subsection 2 or in any meeting of shareholders held at a designated place in which one or more shareholders participate by means of remote communication under subdivision b of subsection 2:
  - a. The corporation shall implement reasonable measures to:
    - (1) Verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a shareholder; and
    - (2) Provide each shareholder participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to:
      - (a) Read or hear the proceedings of the meeting substantially concurrently with those proceedings;
      - (b) If allowed by the procedures governing the meeting, have the shareholder's remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks; and
      - (c) If otherwise entitled, vote on matters submitted to the shareholders.
  - b. Participation in a meeting by this means constitutes presence at the meeting in person or by proxy if all of the requirements of section 10-19.1-76.2 are met.
- 4. With respect to notice to shareholders:
  - a. Any notice to shareholders given by the corporation under any provision of this chapter, the articles, or the bylaws by a form of electronic communication consented to by the shareholder to whom the notice is given is effective when given. The notice is deemed given:
    - (1) If by facsimile communication, when directed to a telephone number at which the shareholder has consented to receive notice;

- (2) If by electronic mail, when directed to an electronic mail address at which the shareholder has consented to receive notice;
  - (3) If by a posting on an electronic network on which the shareholder has consented to receive notice, together with separate notice to the shareholder of the specific posting, upon the later of:
    - (a) The posting; or
    - (b) The giving of the separate notice; or
  - (4) If by any other form of electronic communication by which the shareholder has consented to receive notice, when directed to the shareholder.
- b. An affidavit of the secretary, other authorized officer, or authorized agent of the corporation, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.
  - c. Consent by a shareholder to notice given by electronic communication may be given in writing or by authenticated electronic communication. The corporation is entitled to rely on any consent so given until revoked by the shareholder. However, no revocation affects the validity of any notice given before receipt by the corporation of revocation of the consent.
- 5. Any ballot, vote, authorization, or consent submitted by electronic communication under this chapter may be revoked by the shareholder submitting the ballot, vote, authorization, or consent so long as the revocation is received by an officer of the corporation at or before the meeting or before an action without a meeting is effective according to section 10-19.1-75.
  - 6. Waiver of notice by a shareholder of a meeting by means of authenticated electronic communication may be given in the manner provided in subsection 4 of section 10-19.1-73. Participation in a meeting by means of remote communication described in subdivisions a and b of subsection 2 is a waiver of notice of that meeting, except when the shareholder objects:
    - a. At the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened; or
    - b. Before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

**10-19.1-75.3. Number of shareholders.**

- 1. The following identified as a shareholder in a corporation's current record of shareholders constitutes one shareholder:
  - a. Three or fewer co-owners;
  - b. A corporation, partnership, trust, estate, or other entity;
  - c. The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account; or
  - d. One data address.
- 2. Shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe the names represent the same person.

**10-19.1-76. Quorum of shareholders.**

- 1. Unless otherwise provided in the articles or bylaws, a quorum for a meeting of shareholders is the holders of a majority of the voting power of the shares entitled to vote at the meeting.
- 2. Except as provided in subdivision b, a quorum is necessary for the transaction of business at a meeting of shareholders.
  - a. If a quorum is not present, a meeting may be adjourned from time to time for that reason.
  - b. If a quorum has been present at a meeting and shareholders have withdrawn from the meeting so that less than a quorum remains, the shareholders still present may continue to transact business until adjournment.

#### **10-19.1-76.1. Voting of shares by organizations and legal representatives.**

1. Shares of a corporation registered in the name of another domestic or foreign corporation may be voted by the president or other legal representative of the domestic or foreign corporation.
2. Except as provided in subsection 3, shares of a corporation registered in the name of a subsidiary are not entitled to be voted on any matter.
3. Shares of a corporation in the name of or under the control of the corporation or a subsidiary in a fiduciary capacity are not entitled to be voted on any matter, except to the extent that the settlor or beneficial owner possesses and exercises a right to vote or gives the corporation or, with respect to shares in the name of or under control of a subsidiary, the subsidiary, binding instructions on how to vote the shares.
4. Shares under the control of a person in a capacity as a personal representative, an administrator, executor, guardian, conservator, or attorney in fact may be voted by the person, either in person or by proxy, without registration of those shares in the name of the person. Shares registered in the name of a trustee of a trust or in the name of a custodian may be voted by the person, either in person or by proxy, but a trustee of a trust or a custodian may not vote shares held by the person unless they are registered in the name of the person.
5. Shares registered in the name of a trustee in bankruptcy or a receiver may be voted by the trustee or either in person or by proxy. Shares under the control of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver without registering the shares in the name of the trustee or receiver, if authority to do so is contained in an appropriate order of the court by which the trustee or receiver was appointed.
6. Shares registered in the name of an organization not described in subsections 1 through 5 may be voted either in person or by proxy by the legal representative of that organization.
7. A shareholder whose shares are pledged may vote those shares until the shares are registered in the name of the pledgee. If the corporation pledges its own shares under subsection 1 of section 10-19.1-93, the corporation may not vote the shares at a meeting or otherwise.

#### **10-19.1-76.2. Proxies.**

1. At or before the meeting for which the appointment is to be effective, a shareholder may cast or authorize the casting of a vote:
  - a. By filing with an officer authorized to tabulate votes a written appointment of a proxy which is signed by the shareholder.
  - b. By remote communication or authenticated electronic communication to an officer authorized to tabulate votes, whether or not accompanied by written instructions of the shareholder, of an appointment of a proxy.
    - (1) The remote communication or authenticated electronic communication must set forth or be submitted with information from which it can be determined that the appointment is authorized by the shareholder. If it is reasonably concluded that the remote communication or authenticated electronic communication is valid, the inspectors of election or, if there are no inspectors, the other persons making that determination of validity shall specify the information upon which they relied to make that determination.
    - (2) A proxy so appointed may vote on behalf of the shareholder, or otherwise participate, in a meeting by remote communication according to section 10-19.1-75.2 to the extent the shareholder appointing the proxy would have been entitled to participate by remote communication according to section 10-19.1-75.2 if the shareholder did not appoint the proxy.
  - c. A copy, facsimile telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original writing or transmission could be used if the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.

- d. An appointment of a proxy for shares held jointly by two or more shareholders is valid if signed or consented to by authenticated electronic communication by any one of the shareholders, unless the corporation receives from any of those shareholders written notice or authenticated electronic communication either denying the authority of that person to appoint a proxy or appointing a different proxy.
2. The appointment of a proxy is valid for eleven months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable unless the appointment is coupled with an interest, including a security interest, in the shares or in the corporation. A shareholder who revokes a proxy is not liable in any way for damages, restitution, or other claim.
3. An appointment may be revoked at will, unless the appointment is coupled with an interest, in which case it may not be revoked except in accordance with the terms of an agreement, if any, between the parties to the appointment. Appointment of a proxy is revoked by the person appointing the proxy by:
  - a. Attending a meeting and voting in person;
  - b. Signing and delivering to an officer or to a duly authorized agent of the corporation either:
    - (1) A writing stating the appointment of the proxy is revoked; or
    - (2) A new appointment; or
  - c. Remote communication or by authenticated electronic communication, whether or not accompanied by written instructions of the shareholder, of:
    - (1) A statement that the proxy is revoked; or
    - (2) A new appointment.
4. Revocation in either manner provided in subdivision b or c of subsection 3 revokes all earlier proxy appointments and is effective:
  - a. When filed with an officer or with a duly authorized agent of the corporation; or
  - b. When the remote communication or the authenticated electronic communication is received by an officer or by the duly authorized agent of the corporation.The remote communication or the authenticated electronic communication must set forth or be submitted with information from which it can be determined that the revocation or the new appointment was authorized by the shareholder.
5. The death or incapacity of a person appointing a proxy does not affect the right of the corporation to accept the authority of the proxy, unless written notice of the death or incapacity is received by an officer authorized to tabulate votes before the proxy exercises authority under that appointment.
6. Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a shareholder:
  - a. Any one of them may vote the shares on each item of business in accordance with specific instructions contained in the appointment; and
  - b. If no specific instructions are contained in the appointment with respect to voting the shares on a particular item of business, the shares must be voted as a majority of the proxies determine. If the proxies are equally divided, the shares may not be voted.
7. Subject to section 10-19.1-76.3 and an express restriction, limitation, or specific reservation of authority of the proxy appearing on the appointment, the corporation may accept a vote or action by the proxy as the action of the shareholder. The vote of a proxy is final, binding, and not subject to challenge. However, the proxy is liable to the shareholder or beneficial owner for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.
8. If a proxy is given authority by a shareholder to vote on less than all items of business considered at a meeting of shareholders, the shareholder is considered to be present and entitled to vote by the proxy for purposes of subsection 1 of section 10-19.1-74, only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a shareholder who abstains with respect to an item of



business is considered to have authority to vote on the item of business for purposes of this subsection.

**10-19.1-76.3. Acceptance of shareholder act by the corporation.**

1. If the name or network signature signed on a vote, consent, waiver, or proxy appointment corresponds to the record name or data address of a shareholder, the corporation if acting in good faith may accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.
2. Unless the articles or bylaws provide otherwise, if the name or network signature signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name or data address of a shareholder, the corporation if acting in good faith may accept the vote, consent waiver, or proxy appointment and give it effect as the act of the shareholder if:
  - a. The shareholder is an organization and the name or network signature signed purports to be that of an officer, manager, or agent of the organization;
  - b. The name or network signature signed purports to be that of an administrator, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;
  - c. The name or network signature signed purports to be that of a receiver or trustee in bankruptcy of the shareholder, and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;
  - d. The name or network signature signed purports to be that of a pledgee, beneficial owner, or attorney in fact of the shareholder, and if, the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or
  - e. Two or more persons hold the shares as cotenants or fiduciaries and the name or network signature signed purports to be the name or data address of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders.
3. The corporation may reject a vote, consent, waiver, or proxy appointment if the officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis to doubt the validity of the signature on it or the authority of the signatory to sign for the shareholder.
4. The corporation or 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 is not liable in damages to the shareholder for the consequences of the acceptance or rejection.
5. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

**10-19.1-77. Voting rights.**

Repealed by S.L. 1997, ch. 103, § 248.

**10-19.1-78. Voting list.**

Repealed by S.L. 1997, ch. 103, § 248.

**10-19.1-79. Voting of shares by organizations and legal representatives.**

Repealed by S.L. 1997, ch. 103, § 248.

**10-19.1-80. Proxies.**

Repealed by S.L. 1997, ch. 103, § 248.

### **10-19.1-81. Voting trusts.**

1. Shares in a corporation may be transferred to a trustee pursuant to written agreement, for the purpose of conferring on the trustee the right to vote and otherwise represent the beneficial owner of those shares for a period not exceeding ten years, except that if the agreement is made in connection with an indebtedness of the corporation, the voting trust may extend until the indebtedness is discharged. Unless otherwise specified in the agreement, the voting trust may be terminated at any time by the beneficial owners of a majority of the voting power of the shares held by the trustee. A signed original of the agreement must be filed with the corporation.
2. When a voting trust agreement is signed, the trustee shall prepare a list of the identities of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust. The list must include each shareholder's:
  - a. Physical mailing address, if the identity of a shareholder on the list consists of the shareholder's name; or
  - b. Authorized means of receipt for electronic transmissions, if the identity of a shareholder on the list consists of the shareholder's data address.
3. Unless otherwise provided in the trust agreement, if there are two or more trustees, the manner of voting is determined as provided in subsection 5 of section 10-19.1-73.2.

### **10-19.1-82. Shareholder voting agreements.**

A written agreement solely among persons who are then shareholders or subscribers for shares to be issued, relating to the voting of their shares, is valid and specifically enforceable by and against the parties to the agreement. The agreement may override the provisions of section 10-19.1-76.2 regarding proxies and is not subject to the provisions of section 10-19.1-73.2 regarding voting trusts.

### **10-19.1-83. Shareholder control agreements.**

1. A written agreement among the shareholders of a corporation and the subscribers for shares to be issued, relating to the control of any phase of the business and affairs of the corporation, its liquidation and dissolution, or the relations among shareholders of or subscribers to shares of the corporation is valid and specifically enforceable as provided in subsections 2 and 3. The agreement may also include as parties persons who are neither shareholders or subscribers.
2. A written agreement as described in subsection 1 which relates to the control of or the liquidation and dissolution of the corporation, the relations among the shareholders and subscribers, or any phase of the business and affairs of the corporation, including the management of its business, the declaration and payment of distributions, the election of directors or officers, the employment of shareholders and others by the corporation, or the arbitration of disputes, is valid and specifically enforceable, if the agreement is signed by all persons who, on the date the agreement first became effective, are then the shareholders of the corporation, whether or not the shareholders all have voting shares, and the subscribers for shares, whether or not voting shares, to be issued. A written agreement as described in subsection 1 may provide for its amendment through nonunanimous means.
3. The written agreement is enforceable by the persons described in subsection 1 who are parties to the agreement and is binding upon and enforceable against only the persons described in subsection 1 and other persons with knowledge of the existence of the agreement. A signed original of the written agreement must be filed with the corporation. The existence and location of a copy of the written agreement must be noted conspicuously on the face or back of each certificate for shares issued by the corporation and included in information sent to the holders of uncertificated shares according to subsection 6 of section 10-19.1-66. A shareholder, a beneficial owner of shares, or another person with a security interest in shares may obtain upon written demand a copy of the agreement from the corporation at the expense of the corporation.

4. If an agreement authorized by this section takes away from any person any of the authority and responsibility which that person would otherwise possess under this chapter, the effect of the agreement is also:
  - a. To relieve that person of liability imposed by law for acts and omissions in the possession or exercise of that authority and responsibility; and
  - b. To impose that liability on the person or persons possessing the authority and responsibility under the agreement.
5. A shareholder is not liable pursuant to subsection 4 by virtue of a shareholder vote, if the shareholder had no right to vote on the action.
6. This section does not apply to, limit, or restrict agreements otherwise valid, nor is the procedure set forth in this section the exclusive method of agreement among shareholders or between the shareholders and the corporation with respect to any of the matters described in this section.

**10-19.1-84. Books and records - Inspection.**

1. A corporation shall keep, at the corporation's principal executive office or at another place or places within the United States determined by the board, a share register not more than one year old, containing the identities of each shareholder, in alphabetical or numerical order by class of shares showing the number and classes of shares held by each shareholder.
  - a. The list must include each shareholder's:
    - (1) Physical mailing address, if the identity of a shareholder on the list consists of the shareholder's name; or
    - (2) Authorized means of receipt for electronic transmissions, if the identity of a shareholder on the list consists of the shareholder's data address.
  - b. A record of shareholders may show both the shareholder's name and data address.
  - c. A corporation shall also keep, at the corporation's principal executive office or at another place or places within the United States determined by the board, a record of the dates on which certificated or uncertificated shares were issued.
2. A corporation shall keep, at its principal executive office or at another place or places within the United States determined by the board, and, if its principal executive office or any such other place is outside of this state, shall make available at its registered office or at its principal executive office within this state within ten days after receipt by an officer of the corporation of a written demand for them made by a person described in subsection 4 or 5, originals or copies of:
  - a. Records of all proceedings of shareholders for the last three years;
  - b. Records of all proceedings of the board for the last three years;
  - c. Its articles and all amendments currently in effect;
  - d. Its bylaws and all amendments currently in effect;
  - e. Financial statements required by section 10-19.1-85 and the financial statement for the most recent interim period prepared in the course of the operation of the corporation for distribution to the shareholders or to a governmental agency as a matter of public record;
  - f. Reports made to shareholders generally within the last three years;
  - g. A statement of the identities and usual business addresses of its directors and principal officers;
  - h. Voting trust agreements and beneficial interests owner's list described in section 10-19.1-81;
  - i. Shareholder control agreements described in section 10-19.1-83; and
  - j. A copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under subsection 8 of section 10-19.1-10.
3. A corporation shall keep appropriate and complete financial records.
4. A shareholder or a holder of a voting trust certificate of a corporation that is not a publicly held corporation has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time, and the

corporation shall make available within ten days after receipt by an officer of the corporation of the written demand:

- a. The share register; and
  - b. All records referred to in subsection 2.
5. A shareholder or a holder of a voting trust certificate of a corporation that is not a publicly held corporation has a right, upon written demand, to examine and copy, in person or by a legal representative, other corporate records at any reasonable time only if the shareholder, beneficial owner, or holder of a voting trust certificate demonstrates a proper purpose for the examination.
  6. A shareholder, beneficial owner, or holder of a voting trust certificate of a publicly held corporation has, upon written demand stating the purpose and acknowledged or verified in the manner provided in chapter 44-06.1, a right at any reasonable time to examine and copy the corporation's share register and other corporate records reasonably related to the stated purpose and described with reasonable particularity in the written demand upon demonstrating the stated purpose to be a proper purpose. The acknowledged or verified demand must be directed to the corporation at its registered office in this state or at its principal place of business.
  7. For purposes of subsections 5 and 6, a "proper purpose" is one reasonably related to the person's interest as a shareholder, beneficial owner, or holder of a voting trust certificate of the corporation.
  8. On application of the corporation, a court in this state may issue a protective order permitting the corporation to withhold portions of the records of proceedings of the board for a reasonable period of time, not to exceed twelve months, in order to prevent premature disclosure of confidential information which would be likely to cause competitive injury to the corporation. A protective order may be renewed for successive reasonable periods of time, each not to exceed twelve months and in total not to exceed thirty-six months, for good cause shown. If a protective order is issued, the statute of limitations for any action which the shareholder, beneficial owner, or holder of a voting trust certificate might bring as a result of information withheld automatically extends for the period of delay. If the court does not issue a protective order with respect to any portion of the records of proceedings as requested by the corporation, it shall award reasonable expenses, including attorney's fees and disbursements, to the shareholder, beneficial owner, or holder of a voting trust certificate. This subsection does not limit the right of a court to grant other protective orders or impose other reasonable restrictions on the nature of the corporate records that may be copied or examined under this subsection and subsection 9 or the use or distribution of the records by the demanding shareholder, beneficial owner, or holder of a voting trust certificate.
  9. A shareholder, beneficial owner, or holder of a voting trust certificate who has gained access under subsection 8 to any corporate record, including the share register, may not use, or furnish to another for use, the corporate record or a portion of the contents for any purpose other than a proper purpose. Upon application of the corporation, a court may issue a protective order or order other relief as may be necessary to enforce the provisions of this subsection.
  10. Copies of the share register and all records referred to in subsection 2, if required to be furnished under this section, must be furnished at the expense of the corporation. In all other cases, the corporation may charge the requesting party a reasonable fee to cover the expenses of providing the copy.
  11. The records maintained by a corporation, including its share register, financial records, and minute books, may be retained on, or by means of, or be in the form of any information storage device or method, including, punched holes, printed, magnetized spots, microimages, or any one or more distributed or other electronic networks or databases provided the records are retained in written form or in another form that can be converted into written form within a reasonable time, is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A corporation shall convert the records referred to in

subsection 4 upon the request of a person entitled to inspect them, and the expense of the conversion shall be borne by the person who bears the expense of copying pursuant to subsection 10. A copy of the conversion is admissible in evidence, and must be accepted for all other purposes, to the same extent as the existing or original records would be if they were legible visually.

#### **10-19.1-85. Financial statements.**

1. A corporation shall, upon the written request of a shareholder, prepare annual financial statements within one hundred eighty days after the close of the corporation's fiscal year, including at least a balance sheet as of the end of the fiscal year and a statement of income for the fiscal year, prepared on the basis of accounting methods reasonable in the circumstances. The financial statements may be consolidated statements of the corporation and one or more of its subsidiaries.
  - a. If the statements are audited by a public accountant, each copy must be accompanied by a report setting forth the opinion of the accountant on the statements.
  - b. If these statements are not audited by a public accountant, each copy must be accompanied by a statement of the treasurer or other person in charge of the corporation's financial records:
    - (1) Stating the reasonable belief of the person that the financial statements were prepared in accordance with accounting methods reasonable in the circumstances;
    - (2) Describing the basis of presentation; and
    - (3) Describing any respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year.
2. Upon written request by a shareholder, a corporation shall furnish its most recent annual financial statements as required under subsection 1 no later than ten business days after receipt of a shareholder's written request. "Furnish" for purposes of this subsection means that the corporation shall deliver or mail, postage prepaid, the financial statements to the address specified by the requesting shareholder.

#### **10-19.1-85.1. Equitable remedies for shareholders.**

If a corporation or an officer or director of the corporation violates this chapter, a court in this state, in an action brought by a shareholder of the corporation, may grant equitable relief it considers just and reasonable in the circumstances and award expenses, including attorney's fees and disbursements, to the shareholders.

#### **10-19.1-86. Actions by shareholders.**

No action may be brought in this state by a shareholder in the right of a domestic or foreign corporation unless the plaintiff is a holder of record of shares or voting trust certificates at the time of the transaction of which the plaintiff complains, or the plaintiff's shares or voting trust certificates thereafter devolved upon the plaintiff by operation of law from a person who was a holder of record at such time.

1. In any action thereafter instituted in the right of any domestic or foreign corporation by the holder or holders of record of shares of the corporation or voting trust certificates, the court having jurisdiction, upon final judgment and finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in defense of such action.
2. In any action now pending or hereafter instituted or maintained in the right of any domestic or foreign corporation by the holder or holders of record of less than five percent of the outstanding shares of any class of the corporation or voting trust certificates, unless the shares or voting trust certificates so held have a market value in excess of twenty-five thousand dollars, the corporation in whose right such action is brought is entitled at any time before final judgment to require the plaintiff or plaintiffs

to give security for the reasonable expenses, including fees of attorneys, that may be incurred by it in connection with such action or may be incurred by other parties named as defendant for which it may become legally liable.

- a. Market value must be determined on the date the plaintiff institutes the action or, in the case of an intervenor, on the date the intervenor becomes a party to the action.
- b. The amount of the security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or is excessive.
- c. The corporation has recourse to such security in such amount as the court having jurisdiction determines upon the termination of the action, whether or not the court finds the action was brought without reasonable cause.

**10-19.1-87. Rights of dissenting shareholders.**

1. A shareholder of a corporation may dissent from, and obtain payment for the fair value of the shareholder's shares in the event of, any of the following corporate actions:
  - a. Unless otherwise provided in the articles, an amendment of the articles that materially and adversely affects the rights or preferences of the shares of a dissenting shareholder in that it:
    - (1) Alters or abolishes a preferential right of the shares;
    - (2) Creates, alters, or abolishes a right in respect of the redemption of the shares, including a provision respecting a sinking fund for the redemption or repurchase of shares;
    - (3) Alters or abolishes a pre-emptive right of the holder of the shares to acquire shares, securities other than shares, or rights to purchase shares or securities other than shares;
    - (4) Excludes or limits the right of a shareholder to vote on a matter, or to accumulate votes, except as the right may be excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights; or
    - (5) Eliminates the right to obtain payment under this subdivision;
  - b. A sale, lease, transfer, or other disposition of property and assets of the corporation that requires shareholder approval under subsection 2 of section 10-19.1-104, but not including:
    - (1) A disposition in dissolution described in subsection 2 of section 10-19.1-109;
    - (2) A disposition pursuant to an order of a court; or
    - (3) A disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;
  - c. A plan of merger to which the corporation is a constituent organization, except as provided in subsection 3 and except for a plan of merger adopted under section 10-19.1-100.1;
  - d. A plan of exchange, whether under this chapter or under its governing statute in the case of another organization, to which the corporation is a constituent organization as the corporation whose shares will be acquired by the acquiring organization, except as provided in subsection 3;
  - e. A plan of conversion adopted by a corporation; or
  - f. Any other corporate action taken pursuant to a shareholder vote with respect to which the articles, the bylaws, or a resolution approved by the board directs that dissenting shareholders may obtain payment for their shares.
2. A shareholder may not assert dissenters' rights as to less than all of the shares registered in the name of the shareholder, unless the shareholder dissents with respect to all the shares that are beneficially owned by another person but registered in the name of the shareholder and discloses the name and address of each beneficial owner on whose behalf the shareholder dissents. In that event, the rights of the dissenter must be determined as if the shares as to which the shareholder has

dissented and the other shares were registered in the names of different shareholders. The beneficial owner of shares who is not the shareholder may assert dissenters' rights with respect to shares held on behalf of the beneficial owner, and must be treated as a dissenting shareholder under the terms of this section and section 10-19.1-88, if the beneficial owner submits to the corporation at the time of or before the assertion of the rights a written consent of the shareholder.

3. Unless the articles, the bylaws, or a resolution approved by the board otherwise provide, the right to obtain payment under this section does not apply to the shareholders of:
  - a. The surviving corporation in a merger with respect to shares of the shareholders that are not entitled to be voted on the merger and are not canceled or exchanged in the merger; or
  - b. The corporation whose shares will be acquired by the acquiring organization in a plan of exchange with respect to shares of the shareholders that are not entitled to be voted on the plan of exchange and are not exchanged in the plan of exchange.
4. The shareholders of a corporation who have a right under this section to obtain payment for their shares, or who would have the right to obtain payment for their shares absent the exception set for in subsection 6, do not have a right at law or in equity to have a corporate action described in subsection 1 set aside or rescinded, except when the corporate action is fraudulent with regard to the complaining shareholder or the corporation.
5. If a date is fixed according to subsection 1 of section 10-19.1-73.2 for the determination of shareholders entitled to receive notice of and to vote on an action described under subsection 1, only shareholders as of the date fixed and beneficial owners as of the date fixed who hold through shareholders, as provided in subsection 2, may exercise dissenters' rights.
6. Notwithstanding subsection 1, the right to obtain payment under this section, other than in connection with a plan of merger adopted under section 10-19.1-100, is limited in accordance with the following provisions:
  - a. The right to obtain payment under this section is not available for the holders of shares of any class or series of shares that is listed on the New York stock exchange, the American stock exchange, nasdaq global market, or the nasdaq global select market.
  - b. The applicability of subdivision a is determined as of:
    - (1) The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action described in subsection 1; or
    - (2) The day before the effective date of corporate action described in subsection 1 if there is no meeting of shareholders.
  - c. Subdivision a is not applicable, and the right to obtain payment under this section is available pursuant to subsection 1, for the holders of any class or series of shares who are required by the terms of the corporate action described in subsection 1 to accept for such shares anything other than shares, or cash in lieu of fractional shares, of any class or any series of shares of the domestic or foreign corporation, or any other ownership interest of any other organization, that satisfies the standards set forth in subdivision a at the time the corporate action becomes effective.

**10-19.1-88. Procedures for asserting dissenters' rights.**

1. For purposes of this section, the terms defined in this subsection have the meanings given them.
  - a. "Corporation" means the issuer of the shares held by a dissenter before the corporate action referred to in subsection 1 of section 10-19.1-87 or the successor by merger of that issuer.

- b. "Fair value of the shares" means the value of the shares of a corporation immediately before the effective date of a corporate action referred to in subsection 1 of section 10-19.1-87.
    - c. "Interest" means interest commencing five days after the effective date of the corporate action referred to in subsection 1 of section 10-19.1-87, up to and including the date of payment, calculated at the rate provided in section 28-20-34 for interest on verdicts and judgments.
2. If a corporation calls a shareholder meeting at which any action described in subsection 1 of section 10-19.1-87 is to be voted upon, the notice of the meeting shall inform each shareholder of the right to dissent and shall include a copy of section 10-19.1-87 and this section.
3. If the proposed action must be approved by the shareholders, and the corporation calls a meeting of shareholders, then a shareholder who is entitled to dissent under section 10-19.1-87 and who wishes to exercise dissenter's rights shall file with the corporation before the vote on the proposed action a written notice of intent to demand the fair value of the shares owned by the shareholder and may not vote the shares in favor of the proposed action.
4. After the proposed action has been approved by the board and, if necessary, the shareholders, the corporation shall send to all shareholders who have complied with subsection 3, to all shareholders who did not sign or consent to a written action that gave effect to the action creating the right to obtain payment under section 10-19.1-87, and to all shareholders entitled to dissent if no shareholder vote was required, a notice that contains:
  - a. The address to which a demand for payment and share certificates must be sent in order to obtain payment and the date by which they must be received;
  - b. A form to be used to certify the date on which the shareholder, or the beneficial owner on whose behalf the shareholder dissents, acquired the shares or an interest in them and to demand payment; and
  - c. A copy of section 10-19.1-87 and this section.
5. In order to receive the fair value of shares, a dissenting shareholder must demand payment and deposit certificated shares within thirty days after the notice required by subsection 4 was given, but the dissenter retains all other rights of a shareholder until the proposed action takes effect.
6. After the corporate action takes effect, or after the corporation receives a valid demand for payment, whichever is later, the corporation shall remit, to each dissenting shareholder who has complied with subsections 3, 4, and 5, the amount the corporation estimates to be the fair value of the shares, plus interest, accompanied by:
  - a. The corporation's closing balance sheet and statement of income for a fiscal year ending not more than sixteen months before the effective date of the corporate action, together with the latest available interim financial statements;
  - b. An estimate by the corporation of the fair value of the shares and a brief description of the method used to reach the estimate; and
  - c. A copy of section 10-19.1-87 and this section.
7. The corporation may withhold the remittance described in subsection 6 from a person who was not a shareholder on the date the action dissented from was first announced to the public or who is dissenting on behalf of a person who was not a beneficial owner on that date. If the dissenter has complied with subsections 3, 4, and 5, the corporation shall forward to the dissenter the materials described in subsection 6, a statement of the reason for withholding the remittance, and an offer to pay to the dissenter the amount listed in the materials if the dissenter agrees to accept the amount in full satisfaction. The dissenter may decline the offer and demand payment under subsection 9. Failure to do so entitles the dissenter only to the amount offered. If the dissenter makes demand, subsections 10 and 11 apply.
8. If the corporation fails to remit within sixty days of the deposit of certificates, it shall return all deposited certificates. However, the corporation may again give notice under subsections 4 and 5 and require deposit at a later time.



9. If a dissenter believes that the amount remitted under subsections 6, 7, and 8 is less than the fair value of the shares plus interest, the dissenter may give written notice to the corporation of the dissenter's own estimate of the fair value of the shares plus interest, within thirty days after the corporation mails the remittance under subsections 6, 7, and 8, and demand payment of the difference. Otherwise, a dissenter is entitled only to the amount remitted by the corporation.
10. If the corporation receives a demand under subsection 9, it shall, within sixty days after receiving the demand, either pay to the dissenter the amount demanded or agreed to by the dissenter after a discussion with the corporation or file in court a petition requesting that the court determine the fair value of the shares plus interest. The petition shall be filed in the county in which the registered office of the corporation is located, except that a surviving foreign corporation that receives a demand relating to the shares of a constituent corporation shall file the petition in the county in this state in which the last registered office of the constituent corporation was located. The petition shall name as parties all dissenters who have demanded payment under subsection 9 and who have not reached agreement with the corporation. The corporation, after filing the petition, shall serve all parties with a summons and copy of the petition under the North Dakota Rules of Civil Procedure. The residents of this state may be served by registered mail or by publication as provided by law. Except as otherwise provided, the North Dakota Rules of Civil Procedure apply to the proceeding. The jurisdiction of the court is plenary and exclusive. The court may appoint appraisers, with powers and authorities the court deems proper, to receive evidence on and recommend the amount of the fair value of the shares. The court shall determine whether the shareholder or other shareholders in question have fully complied with the requirements of this section, and shall determine the fair value of the shares, taking into account any and all factors the court finds relevant, computed by any method or combination of methods that the court, in its discretion, sees fit to use, whether or not used by the corporation or by a dissenter. The fair value of the shares as determined by the court is binding on all shareholders, wherever located. A dissenter is entitled to judgment for the amount by which the fair value of the shares as determined by the court, plus interest, exceeds the amount, if any, remitted under subsections 6, 7, and 8, but shall not be liable to the corporation for the amount, if any, by which the amount, if any, remitted to the dissenter under subsections 6, 7, and 8 exceeds the fair value of the shares as determined by the court, plus interest.
11. The court shall determine the costs and expenses of a proceeding under subsection 10, including the reasonable expenses in compensation of any appraisers appointed by the court, and shall assess those costs and expenses against the corporation, except that the court may assess part or all of those costs and expenses against a dissenter whose action in demanding payment under subsection 9 is found to be arbitrary, vexatious, or not in good faith.
12. If the court finds that the corporation has failed to comply substantially with this section, the court may assess all fees and expenses of any experts or attorneys as the court deems equitable. These fees and expenses may also be assessed against a person who has acted arbitrarily, vexatiously, or not in good faith in bringing the proceeding, and may be awarded to a party injured by those actions.
13. The court may award, in its discretion, fees and expenses to an attorney for the dissenters out of the amount awarded to the dissenters, if any.

**10-19.1-89. Loans - Guarantees - Suretyship.**

1. A corporation may lend money to, guarantee or pledge its assets as security for an obligation of, become a surety for, or otherwise financially assist any person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the board and:
  - a. Is in the usual and regular course of business of the corporation;
  - b. Is with, or for the benefit of, a related organization, an organization in which the corporation has a financial interest, a person or organization with which the

- corporation has a business relationship in the usual and regular course of business, or an organization to which the corporation has the power to make donations;
- c. Is with, or for the benefit of, an officer or director or other employee of the corporation or a related organization, and may reasonably be expected, in the judgment of the board, to benefit the corporation; or
  - d. Whether or not any separate consideration has been paid or promised to the corporation has been approved by:
    - (1) The holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested person or persons; or
    - (2) The unanimous affirmative vote of the holders of all outstanding shares, whether or not entitled to vote.
2. A loan, guarantee, surety contract, or other financial assistance under subsection 1 may be with or without interest and may be unsecured or may be secured in any manner, including a grant of a security interest in shares of the corporation.
  3. This section does not grant any authority to act as a bank or to carry on the business of banking.

#### **10-19.1-90. Advances.**

A corporation may, without a vote of the directors or its shareholders, advance money to its shareholders who provide services, directors, officers, or employees to cover expenses that can reasonably be anticipated to be incurred by them in the performance of their duties and for which they would be entitled to reimbursement in the absence of an advance.

#### **10-19.1-91. Indemnification.**

1. For purposes of this section:
  - a. "Corporation" includes a domestic or foreign corporation that was the predecessor of the corporation referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
  - b. "Official capacity" means:
    - (1) With respect to a director, the position of director in a corporation;
    - (2) With respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment relationship undertaken by an employee of the corporation; and
    - (3) With respect to a director, officer, or employee of the corporation who, while a director, officer, or employee of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a governor, director, officer, manager, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a governor, director, officer, manager, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.
  - c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the corporation.
  - d. "Special legal counsel" means counsel who has not in the preceding five years:
    - (1) Represented the corporation or a related organization in any capacity other than special legal counsel; or
    - (2) Represented a director, officer, member of a committee of the board, or employee whose indemnification is in issue.
2. Subject to subsection 5, a corporation shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines including excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable

expenses, including attorney's fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

- a. Has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines including excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omissions;
  - b. Acted in good faith;
  - c. Received no improper personal benefit and section 10-19.1-51, if applicable, has been satisfied;
  - d. In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and
  - e. In the case of acts or omissions occurring in the official capacity described in paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that the conduct was in the best interests of the corporation, or in the case of acts or omissions occurring in the official capacity described in paragraph 3 of subdivision b of subsection 1, reasonably believed that the conduct was not opposed to the best interests of the corporation. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the corporation if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.
3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or an equivalent plea does not, of itself, establish that the person did not meet the criteria set forth in subsection 2.
4. Subject to subsection 5, if a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the corporation, to payment or reimbursement by the corporation of reasonable expenses, including attorney's fees and disbursements, incurred by the person in advance of the final disposition of the proceeding:
- a. Upon receipt by the corporation of a written affirmation by the person of a good-faith belief that the criteria for indemnification set forth in subsection 2 have been satisfied and a written undertaking by the person to repay all amounts so paid or reimbursed by the corporation, if the ultimate determination is that the criteria for indemnification have not been satisfied; and
  - b. After a determination that the facts then known to those making the determination would not preclude indemnification under this section.
- The written undertaking required by subdivision a is an unlimited general obligation of the person making it, but need not be secured and shall be accepted without reference to financial ability to make the repayment.
5. The articles or bylaws may prohibit indemnification or advances of expenses otherwise required under this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subsections 2, 3, and 4, including monetary limits on indemnification or advances for expenses, if the prohibitions or conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any act or omission of the person occurring before the effective date of a provision in the articles or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances.
6. This section does not require, or limit the ability of, a corporation to reimburse expenses, including attorney's fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.

7. All determinations whether indemnification of a person is required because the criteria provided in subsection 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 must be made:
  - a. By the board by a majority of a quorum, if the directors who are at the time parties to the proceeding are not counted for determining either a majority or the presence of a quorum;
  - b. If a quorum under subdivision a cannot be obtained, by a majority of a committee of the board, consisting solely of two or more directors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board, including directors who are parties;
  - c. If a determination is not made under subdivision a or b, by special legal counsel, selected either by a majority of the board or a committee by vote pursuant to subdivision a or b or, if the requisite quorum of the full board cannot be obtained and the committee cannot be established, by a majority of the full board, including directors who are parties;
  - d. If a determination is not made under subdivisions a, b, and c, by the affirmative vote of the shareholders required by section 10-19.1-74, other than the shareholders who are a party to the proceeding; or
  - e. If an adverse determination is made under subdivisions a through d, or under subsection 8, or if no determination is made under subdivisions a through d, or under subsection 8, within sixty days after:
    - (1) The later to occur of the termination of a proceeding or a written request for indemnification to the corporation; or
    - (2) A request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires.The person seeking indemnification or payment or reimbursement of expenses pursuant to this subdivision has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.
8. With respect to a person who is not, and who was not at the time of the acts or omissions complained of in the proceedings, a director, officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the corporation, the determination whether indemnification of this person is required because the criteria set forth in subsection 2 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 may be made by an annually appointed committee of the board, having at least one member who is a director. The committee shall report at least annually to the board concerning its actions.
9. A corporation may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the corporation would have been required to indemnify the person against the liability under the provisions of this section.
10. A corporation that indemnifies or advances expenses to a person in accordance with this section in connection with a proceeding by or on behalf of the corporation shall report to the shareholders in writing the amount of the indemnification or advance and to whom and on whose behalf the indemnification or advance was paid not later than the next meeting of shareholders.
11. This section does not limit the power of the corporation to indemnify persons other than a director, officer, employee, or member of a committee of the board by contract or otherwise.

### **10-19.1-92. Distributions.**

1. The board may authorize and cause the corporation to make a distribution only if the board determines, in accordance with subsection 2, that the corporation will be able to pay its debts in the ordinary course of business after making the distribution and the board does not know before the distribution is made that the determination was or has become erroneous.
  - a. The corporation may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution.
  - b. The effect of a distribution on the ability of the corporation to pay its debts in the ordinary course of business after making the distribution must be measured in accordance with subsection 3.
  - c. The right of the board to authorize, and the corporation to make, distributions may be prohibited, limited, or restricted by, or the rights and priorities of persons to receive distributions may be established by, the articles or bylaws or an agreement.
2. A determination that the corporation will be able to pay its debts in the ordinary course of business after the distribution is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 10-19.1-50 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. No liability under section 10-19.1-50 or 10-19.1-95 will accrue if the requirements of this subsection have been met.
3. With respect to the effect of a distribution:
  - a. In the case of a distribution made by a corporation in connection with a purchase, redemption, or other acquisition of its shares, the effect of the distribution must be measured as of the date on which money or other property is transferred, or indebtedness payable in installments or otherwise is incurred, by the corporation, or as of the date on which the shareholder ceases to be a shareholder of the corporation with respect to the shares, whichever is the earliest.
  - b. The effect of any other distribution must be measured as of the date of its authorization if payment occurs one hundred twenty days or less following the date of authorization, or as of the date of payment if payment occurs more than one hundred twenty days following the date of authorization.
  - c. The provisions of chapter 13-02.1 do not apply to distributions made by a corporation governed by this chapter.
4. Indebtedness of a corporation incurred or issued in a distribution in accordance with this section to a shareholder who as a result of the transaction is no longer a shareholder is on a parity with the indebtedness of the corporation to its general unsecured creditors, except to the extent subordinated, agreed to, or secured by a pledge of any assets of the corporation or a related organization, or subject to any other agreement between the corporation and the shareholder.
5. A distribution may be made to the holders of a class or series of shares only if:
  - a. All amounts payable to the holders of shares having a preference for the payment of that kind of distribution are paid; and
  - b. The payment of the distribution does not reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of liquidation to the holders of shares having preferential rights, unless:
    - (1) The distribution is made to those shareholders in the order and to the extent of their respective priorities; or
    - (2) The holders of shares who do not receive distributions in that order give notice to the corporation of their agreement to waive their right to that distribution.
6. A determination that the payment of the distribution described in subsection 5 does not reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of liquidation to the holders of shares having preferential rights is presumed to be proper if the determination is made in compliance with the

standard of conduct provided in section 10-19.1-50 on the basis of financial information prepared in accordance with accounting methods, a fair valuation, or other methods reasonable in the circumstances. Liability under section 10-19.1-50 or 10-19.1-94 will not arise if the requirements of this subsection are met.

7. If the money or property available for distribution is insufficient to satisfy all preferences, the distributions shall be made pro rata according to the order of priority of preferences by classes and by series within those classes.

**10-19.1-93. Power to acquire shares.**

1. A corporation may acquire its own shares, subject to section 10-19.1-92.
  - a. If a corporation acquires its own shares, then any of the acquired shares that are not pledged by the corporation as security for the future payment of some or all of the purchase price for the shares constitute authorized but unissued shares of the corporation, unless the articles provide that they may not be reissued. If the articles prohibit reissue, the number of authorized shares is reduced by the number of shares acquired.
  - b. If a corporation pledges acquired shares as security for future payment of all or part of the purchase price for the shares and reissues the pledged shares in its own name, then:
    - (1) The shares must continue to be issued and outstanding except for voting and determination of a quorum, and the shares are not considered to be present and entitled to vote at any meeting of shareholders;
    - (2) The corporation may not vote or exercise any other rights of a shareholder with respect to the pledged shares, but the pledgee shall have any rights, other than the right to vote, with respect to the shares which the pledgee is entitled to by contract;
    - (3) If the pledge is foreclosed, the corporation shall reissue and deliver the pledged shares to or at the direction of the pledgee; and
    - (4) Shares that are released from a pledge have the status specified in subdivision a.
2. If the number of authorized shares of a corporation is reduced by an acquisition of its shares, the corporation shall, no later than the time it makes its next annual report to shareholders or, if no report is made, no later than three months after the end of the fiscal year in which the acquisition occurs, file with the secretary of state a statement of cancellation showing the reduction in the authorized shares. The statement must contain:
  - a. The name of the corporation;
  - b. The number of acquired shares canceled, itemized by classes and series; and
  - c. The aggregate number of authorized shares itemized by classes and series, after giving effect to the cancellation.

**10-19.1-94. Liability of shareholders for illegal distributions.**

1. A shareholder who knows or should have known that a distribution was made in violation of section 10-19.1-92 is liable to the corporation, its receiver or other person winding up its affairs, or a director under subsection 2 of section 10-19.1-95 but only to the extent that the distribution received by the shareholder exceeded the amount that properly could have been paid under section 10-19.1-92.
2. An action may not be commenced under this section more than two years from the date of the distribution.

**10-19.1-95. Liability of directors for illegal distributions.**

1. In addition to any other liabilities, a director who is present and votes for or fails to vote against, except a director who is prohibited by section 10-19.1-51 from voting on the distribution, or consents in writing to, a distribution made in violation of subsection 1 or 5 of section 10-19.1-92 or a restriction contained in the articles or bylaws or an

agreement, and who fails to comply with the standard of conduct provided in section 10-19.1-50, is liable to the corporation, its receiver or any other person winding up its affairs, jointly and severally with all other directors so liable and to other directors under subsection 3, but only to the extent that the distribution exceeded the amount that properly could have been paid under section 10-19.1-92.

2. A director against whom an action is brought under this section with respect to a distribution may implead in that action all shareholders who received the distribution and may compel pro rata contribution from them in that action to the extent provided in subsection 1 of section 10-19.1-94.
3. A director against whom an action is brought under this section with respect to a distribution may implead in that action all other directors who voted for or consented in writing to the distribution and who failed to comply with the standard of conduct provided in section 10-19.1-50, and may compel pro rata contribution from them in that action.
4. An action may not be commenced under this section more than two years from the date of the distribution.

#### **10-19.1-96. Merger - Exchange - Transfer.**

1. With or without a business purpose, a corporation may merge with another domestic or foreign organization under a plan of merger approved in the manner provided in this section and in sections 10-19.1-97 through 10-19.1-103 and in the manner provided in the governing statute of the other organization.
2. With respect to an exchange:
  - a. A corporation may acquire all the ownership interests of one or more classes or series of another domestic or foreign organization under a plan of exchange approved in the manner provided in this section and in sections 10-19.1-97 through 10-19.1-103 in the case of a domestic corporation and in the manner provided in the governing statute in the case of any other organization.
  - b. Another domestic or foreign organization may acquire all the shares of one or more classes or series of a corporation under a plan of exchange approved in the manner provided in this section and in sections 10-19.1-97 through 10-19.1-103 in the case of a domestic corporation and in the manner provided in the governing statute in the case of any other organization.
3. A corporation may sell, lease, transfer, or otherwise dispose of all or substantially all of the corporation's property and assets in the manner provided in section 10-19.1-104.
4. A corporation may participate in a merger or exchange only as permitted by this section and by sections 10-19.1-97 through 10-19.1-103. The dissenter's rights for shareholders of a corporation are governed by this chapter.

#### **10-19.1-97. Plan of merger or exchange.**

1. A plan of merger or exchange must contain:
  - a. The name of the corporation and of each other constituent organization proposing to merge or participate in an exchange and:
    - (1) In the case of a merger, the name of the surviving organization; or
    - (2) In the case of an exchange, the name of the acquiring organization;
  - b. The terms and conditions of the proposed merger or exchange;
  - c. The manner and basis for converting or exchanging ownership interests:
    - (1) In the case of a merger, the manner and basis of converting the ownership interests of the constituent organizations into securities of the surviving organization or of any other organization or, in whole or in part, into money or other property; or
    - (2) In the case of an exchange, the manner and basis of exchanging the ownership interests to be acquired for securities of the acquiring organization or any other organization or, in whole or in part, into money or other property;

- d. In the case of a merger, a statement of any amendments to the originating records of the surviving organization proposed as part of the merger; and
  - e. Any other provisions with respect to the proposed merger or exchange which are deemed necessary or desirable.
2. This section does not limit the power of a corporation to acquire all or part of the ownership interests of one or more classes or series of any other organization through a negotiated agreement with the owners or otherwise.

**10-19.1-98. Plan approval.**

1. A resolution containing the plan of merger or exchange must be approved by the governing body as required by section 10-19.1-46 in the case of a domestic corporation, or by the governing statute of each other constituent organization and must then be submitted at a regular or special meeting to the owners of each constituent organization, in the case of a plan of merger or the constituent organization whose ownership interests will be acquired by the acquiring constituent organization in the exchange, in the case of a plan of exchange. If owners owning any class or series of ownership interests in a constituent organization are entitled to vote on the plan of merger or exchange under this subsection, then written notice must be given to every owner of that constituent organization, whether or not entitled to vote at the meeting, not less than fourteen days nor more than sixty days before the meeting, in the manner provided in section 10-19.1-73 for notice of meetings of shareholders in the case of a domestic corporation, or in the manner provided in its governing statute in the case of each other constituent organization. The written notice must state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange must be included in or enclosed with the notice.
2. At the meeting a vote of the owners must be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the holders of a majority of the voting power of all ownership interests entitled to vote. Except as provided in subsection 3, a class or series of ownership interests of the constituent organization is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles, or a member-control agreement, entitle the class or series of ownership interests to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.
3. A class or series of ownership interests of the constituent organization is not entitled to vote as a class or series if the plan of merger or exchange affects a cancellation or exchange of all ownership interests of the constituent organization of all classes and series that are outstanding immediately before the merger or exchange and owners of ownership interests of that class or series are entitled to obtain payment for the fair value of their ownership interests under section 10-19.1-87, or would have the right to obtain payment for their ownership interests absent the exception set forth in subsection 6 of section 10-19.1-87, in the case of a domestic corporation, or under its governing statute in the case of any other organization in the event of the merger or exchange.
4. Notwithstanding subsections 1 and 2, submission of a plan of merger or exchange to a vote at a meeting of owners of a surviving constituent organization is not required if:
  - a. The articles will not be amended in the transaction;
  - b. Each owner of ownership interests in the constituent organization which were outstanding immediately before the effective date of the transaction will hold the same number of ownership interests with identical rights immediately after the effective date;
  - c. The voting power of the outstanding ownership interests of the constituent organization entitled to vote immediately after the merger or exchange, plus the voting power of the ownership interests of the constituent organization entitled to vote issuable on conversion of, or on the exercise of rights to purchase, securities issued in the transaction, will not exceed by more than twenty percent the voting



- power of the outstanding ownership interests of the constituent organization entitled to vote immediately before the transaction; and
- d. The number of participating ownership interests of the constituent organization immediately after the merger, plus the number of participating ownership interests of the constituent organization issuable on conversion of, or on the exercise of rights to purchase, securities issued in the merger, will not exceed by more than twenty percent the number of participating ownership interests of the constituent organization immediately before the merger. "Participating ownership interests" are outstanding ownership interests of the constituent organization which entitle their owners to participate without limitation in distributions by the constituent organization.
5. If the merger or exchange is with an organization other than a domestic corporation, the plan of merger or exchange must also be approved in the manner provided in the governing statute of the other organization.

**10-19.1-99. Articles of merger - Certificate.**

1. Upon receiving the approval required by section 10-19.1-98, articles of merger must be prepared which contain:
  - a. The plan of merger; and
  - b. A statement that the plan is approved by each constituent organization under this chapter or under its governing statute in the case of any other organization.
2. The articles of merger must be signed on behalf of each constituent organization and filed with the secretary of state, together with the fees provided in section 10-19.1-147.
3. The secretary of state shall issue a certificate of merger to the surviving constituent organization or the surviving constituent organization's legal representative. The certificate must contain the effective date of merger.

**10-19.1-100. Merger of subsidiary into parent.**

1. If either the parent or the subsidiary is a domestic organization, then a parent that is a domestic or foreign organization owning at least ninety percent of the outstanding ownership interests of each class and series of a subsidiary that is a domestic or foreign organization directly, or indirectly through related organizations other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger:
  - a. May merge the subsidiary into the parent or into any other subsidiary at least ninety percent of the outstanding ownership interests of each class and series of which is owned by the parent directly, or indirectly through related organizations other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger, without a vote of the owners of the parent or any subsidiary; or
  - b. May merge the parent, or the parent and one or more subsidiaries into one of the subsidiaries under this section.
2. A resolution approved by the present directors of the parent as required by section 10-19.1-46 in the case of a domestic corporation or by the present members of the governing body of the parent as required by its governing statute in the case of any other organization must set forth a plan of merger that contains:
  - a. The name of the subsidiary or subsidiaries, the name of the parent, and the name of the surviving constituent organization;
  - b. The manner and basis of converting the ownership interests of the subsidiary or subsidiaries or the parent into securities or ownership interests of the parent, of the subsidiary, or of another organization; or, in whole or in part, into money or other property;
  - c. If the parent is a constituent organization but is not the surviving constituent organization in the merger, a provision for the pro rata issuance of ownership interests of the surviving constituent organization to the owners of ownership interests of the parent on surrender of any ownership interests of the parent; and

- d. If the surviving constituent organization is a subsidiary, a statement of any amendments to the articles of the surviving constituent organization that will be part of the merger.
3. Notwithstanding subsection 1:
  - a. If the parent is a domestic corporation and the conditions of subsection 4 of section 10-19.1-98 are not met with respect to the parent, then the resolution is not effective unless it is approved by the affirmative vote of the holders of a majority of the voting power of all shares of the parent entitled to vote at a regular or special meeting held in accordance with section 10-19.1-98; and
  - b. If the parent is a domestic or foreign organization and is not the surviving organization in the merger, then the resolution is not effective unless it is also approved in the manner provided in the governing statute of the parent.
4. Notwithstanding subsection 3, if the parent is a constituent organization and is the surviving organization in the merger, it may change its corporate name, without a vote of its owners, by the inclusion of a provision to that effect in the resolution of merger setting forth the plan of merger that is approved by the affirmative vote of a majority of the board members of the parent present. Upon the effective date of the merger, the name of the parent must be changed.
5. If the subsidiary is a domestic organization, then notice of the action, including a copy of the plan of merger must be given to each owner, other than the parent and any subsidiary, of each subsidiary that is a constituent organization in the merger before, or within ten days after, the effective date of the merger.
6. Articles of merger must be prepared which contain:
  - a. The plan of merger;
  - b. The number of outstanding ownership interests of each class and series of the subsidiary that is a constituent organization in the merger, other than the classes or series that, absent this section, would otherwise not be entitled to vote on the merger, and the number of ownership interests of each class and series owned, other than the classes or series that, absent this section, would otherwise not be entitled to vote on the merger, by the parent directly, or indirectly through related constituent organizations; and
  - c. A statement that the plan of merger is approved by the parent under this section.
7. The articles of merger must be signed on behalf of the parent and filed with the secretary of state, with the fees provided in section 10-19.1-147.
8. The secretary of state shall issue a certificate of merger to the surviving constituent organization or the legal representative of the surviving constituent organization. The certificate must contain the effective date of the merger.
9. If all of the ownership interests of one or more domestic subsidiaries that is a constituent organization to a merger under this section are not owned by the parent directly, or indirectly through related constituent organizations, immediately before the merger, then the owners of each domestic subsidiary which is either a limited liability company or a corporation, have dissenter's rights under section 10-19.1-87, without regard to subsection 3 of section 10-19.1-87 or 10-32.1-33, and under section 10-19.1-88.
  - a. If the parent is a constituent organization but is not the surviving organization in the merger, the articles of incorporation or articles of organization of the surviving organization immediately after the merger differ from the articles of incorporation or articles of organization of the parent immediately before the merger in a manner that would entitle an owner of the parent to dissenter's rights under subdivision a of subsection 1 of section 10-19.1-87 or section 10-32.1-33, and the articles of incorporation or articles of organization of the surviving constituent organization constitute an amendment to the articles of incorporation or articles of organization of the parent, then that owner of the parent has dissenter's rights as provided under section 10-19.1-87 or 10-32.1-33.
  - b. Except as provided in this subsection, section 10-19.1-87 does not apply to any merger affected under this section.

10. A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under sections 10-19.1-97 through 10-19.1-99 instead of this section, in which case this section does not apply.

**10-19.1-100.1. Merger to effect a holding company reorganization.**

1. For purposes of this section:
  - a. "Holding company" means the corporation that is or becomes the direct parent of the surviving corporation of a merger accomplished under this section.
  - b. "Parent constituent corporation" means the parent corporation that merges with or into the subsidiary constituent corporation.
  - c. "Subsidiary constituent corporation" means the subsidiary corporation that the parent constituent corporation merges with or into in the merger.
2. Unless its articles expressly provide otherwise, and subject to subsection 3, a parent constituent corporation may merge with or into a subsidiary constituent corporation without a vote of the shareholders of the parent constituent corporation.
3. A merger may be accomplished under this section only if each of the following requirements is met:
  - a. The holding company and the constituent corporations to the merger are each organized under this chapter;
  - b. At all times following the issuance of shares until the consummation of a merger under this section, the holding company was a direct wholly owned subsidiary of the parent constituent corporation;
  - c. Immediately before the consummation of a merger under this section, the subsidiary constituent corporation is an indirect wholly owned subsidiary of the parent constituent corporation and a direct wholly owned subsidiary of the holding company;
  - d. The parent constituent corporation and the subsidiary constituent corporation are the only constituent corporations to the merger;
  - e. Immediately after the merger becomes effective, the surviving corporation becomes or remains a direct wholly owned subsidiary of the holding company;
  - f. Each share or fraction of a share of the parent constituent corporation outstanding immediately before the effective time of the merger is converted in the merger into a share or equal fraction of a share of the holding company having the same designation and relative rights and preferences, and the same restrictions thereon, as the share or fraction of a share of the parent constituent corporation being converted in the merger;
  - g. The articles and bylaws of the holding company immediately following the effective time of the merger contain provisions identical to the articles and bylaws of the parent constituent corporation immediately before the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board, and the initial subscribers for shares and the provisions contained in any amendment to the articles of the parent constituent corporation that were necessary to effect an exchange, reclassification, or cancellation of shares if the exchange, reclassification, or cancellation has become effective;
  - h. The articles and bylaws of the surviving corporation immediately following the effective time of the merger are identical to the articles and bylaws of the parent constituent corporation immediately before the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board, and the initial subscribers for shares and the provisions contained in any amendment to the articles of the parent constituent corporation that were necessary to effect an exchange, reclassification, or cancellation of shares if the exchange, reclassification, or cancellation has become effective, except that:
    - (1) The articles of the surviving corporation shall be amended in the merger to contain a provision requiring that any act or transaction by or involving the

surviving corporation, other than the election or removal of directors of the surviving corporation, that requires for its adoption under this chapter or its articles the approval of the shareholders of the surviving corporation shall, by specific reference to this section, require, in addition, the approval of the shareholders of the holding company, or any successor by merger, by the same vote as is required by this chapter or the articles of the surviving corporation; and

- (2) The articles of the surviving corporation may be amended in the merger to reduce the number of classes, series, and shares that the surviving corporation is authorized to issue;
  - i. The directors of the parent constituent corporation become or remain the directors of the holding company immediately after the merger becomes effective;
  - j. The board of the parent constituent corporation determines that the shareholders of the parent constituent corporation will not recognize gain or loss for United States federal income tax purposes; and
  - k. A resolution approved by the affirmative vote of a majority of the directors of the parent constituent corporation present sets forth a plan of merger that contains provisions addressing the requirements of subdivisions a through j.
4. Neither paragraph 1 of subdivision h of subsection 3, nor any provisions of the surviving corporation's articles required by that item may be construed to require approval of the shareholders of the holding company to elect or remove directors of the surviving corporation.
5. If the name of the holding company at the time the merger takes effect is the same as the name of the parent constituent corporation immediately before that time, the shares of the holding company into which the shares of the parent constituent corporations are converted in the merger must, unless new certificates are issued, be represented by the share certificates that previously represented shares of the parent constituent corporation.
6. Articles of merger must be:
  - a. Prepared that contain:
    - (1) The plan of merger; and
    - (2) A statement that the plan of merger was adopted under this section.
  - b. Signed on behalf of the parent constituent corporation and filed with the secretary of state.
7. The secretary of state shall issue a certificate of merger to the surviving corporation or its legal representative.
8. A merger between a parent and a subsidiary may be accomplished under sections 10-19.1-97, 10-19.1-98, 10-19.1-99, and 10-19.1-100 instead of this section, in which case this section does not apply.

**10-19.1-101. Abandonment of plan of merger or exchange.**

1. After a plan of merger or exchange is approved by the owners entitled to vote on the approval of the plan as provided in section 10-19.1-98 and before the effective date of the plan, the plan may be abandoned:
  - a. With respect to the approval of the abandonment:
    - (1) If the owners of the ownership interests of each of the constituent organizations entitled to vote on the approval of the plan as provided in section 10-19.1-98 have approved the abandonment at a meeting by the affirmative vote of the owners of a majority of the voting power of the ownership interests entitled to vote;
    - (2) If the owners of a constituent organization are not entitled to vote on the approval of the plan under section 10-19.1-98, the governing body of the constituent organization has approved the abandonment by the affirmative vote required by section 10-19.1-46 in the case of a domestic corporation or by its governing statute in the case of any other organization; and

- (3) If the merger or exchange is with a foreign organization, then if abandonment is approved in the manner as may be required by the governing statute of the foreign organization;
  - b. If the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or
  - c. Pursuant to subsection 2.
2. If articles of merger are not filed with the secretary of state and the plan is to be abandoned or if a plan of exchange is to be abandoned before the effective date of the plan, then a resolution by the governing body of any constituent organization abandoning the plan of merger or exchange may be approved by the affirmative vote of the governing body required by section 10-19.1-46 in the case of a domestic corporation or by its governing statute in the case of any other organization, subject to the contract rights of any other person under the plan.
3. If articles of merger are filed with the secretary of state, but are not yet effective, the constituent organizations, in the case of abandonment under paragraph 1 of subdivision a of subsection 1, then the constituent organization or any one of them under paragraph 2 of subdivision a of subsection 1, as the abandoning constituent organization in the case of abandonment under subsection 2, shall file with the secretary of state, with the fees provided in section 10-19.1-147, articles of abandonment that contain:
  - a. The names of the constituent organizations;
  - b. The provision of this section under which the plan is abandoned; and
  - c. The text of the resolution approved by the affirmative vote of a majority of the directors present abandoning the plan.
4. If the certificate of merger is issued, then the governing body shall surrender the certificate to the secretary of state upon filing the articles of abandonment.

**10-19.1-102. Effective date of merger or exchange - Effect.**

1. A merger is effective when the articles of merger are filed with the secretary of state or on a later date specified in the articles of merger. An exchange is effective on the date specified in the plan of exchange.
2. When a merger becomes effective:
  - a. The constituent organizations become a single entity, the surviving organization.
  - b. The separate existence of all constituent organizations except the surviving organization ceases.
  - c. As to any corporation that was a constituent organization and is not the surviving constituent organization, the articles of merger serve as articles of termination, and unless previously filed, the notice of dissolution.
  - d. The surviving organization has all the rights, privileges, immunities, and powers and is subject to all of the duties and liabilities of the specified organization under its governing statute.
  - e. The surviving organization possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent organizations.
    - (1) All property and all debts due on any account, including subscriptions to ownership interests and all other choses in action, and every other interest of or belonging to or due to each of the constituent organizations vests in the surviving organization without any further act or deed.
    - (2) Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent organization by the organization's current officers, managers, or governing body, as the case may be, or, if the organization no longer exists, by the last officers, managers, or governing body of the organization.
    - (3) The title to any real estate or any interest vested in any of the constituent organizations does not revert nor in any way become impaired by reason of the merger.

- f. The surviving organization is responsible and liable for all the liabilities and obligations of each of the constituent organizations.
    - (1) A claim of or against or a pending proceeding by or against a constituent organization may be prosecuted as if the merger did not take place, or the surviving organization may be substituted in the place of the constituent organization.
    - (2) Neither the rights of creditors nor any liens upon the property of a constituent organization are impaired by the merger.
  - g. The articles of the surviving organization are deemed to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.
3. When a merger or exchange becomes effective, the ownership interests to be converted or exchanged under the terms of the plan cease to exist in the case of a merger, or are deemed to be exchanged in the case of an exchange. The owners of those ownership interests are entitled only to the securities, money, or other property into which those ownership interests have been converted or for which those ownership interests have been exchanged in accordance with the plan, subject to any dissenter's rights under section 10-19.1-87 or 10-32.1-33.

**10-19.1-102.1. Continuance of corporate authority.**

When an act or record is considered necessary or appropriate to evidence the vesting of property or other rights in the single corporation, the persons with authority to do so under the articles, bylaws, or member-control agreement of each constituent organization shall do the act or sign and deliver the record and for this purpose, the existence of the constituent organizations and the authority of those persons is continued.

**10-19.1-103. Merger or exchange with foreign organization.**

1. A domestic corporation may merge with, including a merger pursuant to section 10-19.1-100, or participate in an exchange with a foreign organization by following the procedures set forth in this section, if:
  - a. With respect to a merger, the merger is permitted by its governing statute.
  - b. With respect to an exchange, the constituent organization whose ownership interests will be acquired is a domestic organization, regardless of whether the exchange is permitted by its governing statute.
2. Each domestic corporation shall comply with the provisions of sections 10-19.1-96 through 10-19.1-103 with respect to the merger or exchange of ownership interests and each foreign organization shall comply with the applicable provisions of its governing statute.
3. If the surviving organization in a merger will be a domestic corporation, then the organization shall comply with this chapter.
4. If the surviving organization in a merger will be a foreign organization and will transact business in this state, then the organization shall comply with the provisions of its governing statute. In every case, the surviving foreign organization shall file with the secretary of state:
  - a. An agreement that it may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent organization and in a proceeding for the enforcement of the rights of a dissenting owner of an ownership interest of a constituent organization against the surviving foreign organization;
  - b. An irrevocable appointment of the secretary of state as the agent of the organization to accept service of process in any proceeding, and an address to which process may be forwarded as provided in section 10-01.1-13; and
  - c. An agreement that the organization will promptly pay to the dissenting owners of ownership interests of each domestic constituent organization the amount, if any, to which they are entitled under its governing statute.

#### **10-19.1-104. Transfer of assets - When permitted.**

1. A corporation, by affirmative vote of a majority of the directors present upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, and without shareholder approval, may:
  - a. Sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business;
  - b. Grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business; or
  - c. Transfer any or all of its property to an organization all the ownership interests of which are owned directly, or indirectly through wholly owned organizations, by the corporation.
2. With respect to shareholders' approval:
  - a. A corporation, by affirmative vote of a majority of the directors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, when approved at a regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote.
    - (1) Written notice of the meeting must be given to all shareholders whether or not they are entitled to vote at the meeting.
    - (2) The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation.
  - b. Shareholder approval is not required under subdivision a if, following the sale, lease, transfer, or other disposition of its property and assets, the corporation retains a significant continuing business activity. The corporation will conclusively be deemed to have retained a significant continuing business activity if the corporation retains a business activity that represented at least:
    - (1) Twenty-five percent of the corporation's total assets at the end of the most recently completed fiscal year; and
    - (2) Twenty-five percent of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, measured on a consolidated basis with its subsidiaries for each of paragraphs 1 and 2.
3. Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current officers or, if the corporation no longer exists, by its last officers.
4. The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state. A disposition of all or substantially all of the property and assets of the corporation under this section is not considered to be a merger or a de facto merger pursuant to this chapter or otherwise. The transferee shall not be liable solely because it is deemed to be a continuation of the transferor.

#### **10-19.1-104.1. Conversion.**

1. An organization other than a corporation may convert to a corporation, and a corporation may convert to another organization other than a general partnership as provided in this section and sections 10-19.1-104.2 through 10-19.1-104.6 and a plan of conversion, if:
  - a. The governing statute of the other organization authorizes the conversion;
  - b. The conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and

- c. The other organization complies with its governing statute in effecting the conversion.
- 2. For the purposes of sections 10-19.1-104.1 through 10-19.1-104.6, unless the context otherwise requires:
  - a. "Act of the board" means action by the board as provided in section 10-19.1-46 whether:
    - (1) At a meeting of the board as provided in section 10-19.1-43; or
    - (2) By a written action of the board as provided in section 10-19.1-47.
  - b. "Act of the governing body" means action by the governing body of any organization, other than a domestic corporation, in the manner provided in the governing statute.
  - c. "Act of the owners" means action by the owners of an organization, other than a domestic corporation, in the manner provided in its governing statute.
  - d. "Act of the shareholders" means action by the shareholders as provided in section 10-19.1-74 whether:
    - (1) At a meeting of the shareholders as provided in sections 10-19.1-71 and 10-19.1-72; or
    - (2) By a written action of the shareholders as provided in section 10-19.1-75.
  - e. "Certificate of creation" means:
    - (1) A certificate of incorporation, if the converted organization is a corporation deemed to be incorporated under this chapter;
    - (2) A certificate of organization, if the converted organization is a limited liability company deemed to be organized under chapter 10-32.1;**
    - (3) A certificate of limited partnership, if the converted organization is a limited partnership deemed to be formed under chapter 45-10.2;
    - (4) The filed registration of a limited liability partnership, if the converted organization is a limited liability partnership deemed to be established under chapter 45-22; or
    - (5) A certificate of limited liability limited partnership, if the converted organization is a limited liability limited partnership deemed to be formed under chapter 45-23.
  - f. "Date of origin" means the date on which:
    - (1) A corporation which is:
      - (a) The converting organization was incorporated; or
      - (b) The converted organization is deemed to be incorporated;
    - (2) A limited liability company which is:
      - (a) The converting organization was organized; or
      - (b) The converted organization is deemed to be organized;
    - (3) A general partnership that is the converting organization was formed;
    - (4) A limited partnership which is:
      - (a) The converting organization was formed; or
      - (b) The converted organization is deemed to be formed;
    - (5) A limited liability partnership which is:
      - (a) The converting organization was formed; or
      - (b) The converted organization is deemed to be formed; and
    - (6) A limited liability limited partnership which is:
      - (a) The converting organization was formed; or
      - (b) The converted organization is deemed to be formed.
  - g. "Filed registration" means the registration of a limited liability partnership which has been filed with the secretary of state.
  - h. "General partnership" means an organization formed under chapters 45-13 through 45-21.
  - i. "Organizational records" means for an organization which is:
    - (1) A corporation, its articles of incorporation and bylaws;
    - (2) A limited liability company, its articles of organization, operating agreement or bylaws, and any member-control agreement;



- (3) A limited partnership, its partnership agreement;
- (4) A limited liability partnership, its partnership agreement; or
- (5) A limited liability limited partnership, its partnership agreement.

#### **10-19.1-104.2. Plan of conversion.**

A plan of conversion must be in a record and must contain:

1. The name and form of the converting organization before conversion;
2. The name and form of the converted organization after conversion;
3. The terms and conditions of the proposed conversion;
4. The manner and basis of converting each ownership interest in the converting organization into ownership interests in the converted organization or, in whole or in part, into money or other property;
5. The organizational records of the converted organization; and
6. Any other provisions with respect to the proposed conversion that are deemed necessary or desirable.

#### **10-19.1-104.3. Plan approval and amendment.**

1. If the converting organization is a corporation, then:
  - a. A resolution containing or amending the plan of conversion must be approved by an act of the board of the converting corporation and must then be approved by an act of its shareholders.
    - (1) In the action by the shareholders, a class or series of shares is entitled to vote as a class or series on the approval or amendment of the plan.
    - (2) Any amendment of the plan is subject to any contractual rights.
  - b. If the resolution containing or amending the plan of conversion is approved by the shareholders:
    - (1) At a shareholder meeting, then:
      - (a) Written notice must be given to every shareholder of the converting corporation, whether or not entitled to vote at the meeting, not less than fourteen days nor more than fifty days before the meeting, in the manner provided in section 10-19.1-73.
      - (b) The written notice must state that a purpose of the meeting is to consider the proposed plan of conversion or an amendment to it.
      - (c) A copy or short description of the plan of conversion or the amendment to it must be included in or enclosed with the notice.
    - (2) By a written action of the shareholders, then a copy or short description of the plan of conversion or the amendment to it must be included in or attached to the written action.
2. If the converting organization is not a corporation, then the approval and amendment of the plan of conversion must comply with its governing statute in effecting the conversion.

#### **10-19.1-104.4. Articles of conversion.**

1. Upon receiving the approval required by section 10-19.1-104.3, articles of conversion must be prepared in a record that must contain:
  - a. A statement that the converting organization is being converted into another organization, including:
    - (1) The name of the converting organization immediately before the filing of the articles of conversion;
    - (2) The name to which the name of the converting organization is to be changed, which must be a name that satisfies the laws applicable to the converted organization;
    - (3) The form of organization that the converted organization will be; and
    - (4) The jurisdiction of the governing statute of the converted organization;

- b. A statement that the plan of conversion has been approved by the converting organization as provided in section 10-19.1-104.3;
  - c. A statement that the plan of conversion has been approved as required by the governing statute of the converted organization;
  - d. The plan of conversion without organization records;
  - e. A copy of the originating record of the converted organization; and
  - f. If the converted organization is a foreign organization not authorized to transact business or conduct activities in this state, then the street and mailing address of an office which the secretary of state may use for the purposes of subsection 4 of section 10-19.1-104.6.
2. The articles of conversion must be signed on behalf of the converting organization and filed with the secretary of state.
- a. If the converted organization is a domestic organization:
    - (1) Then the filing of the articles of conversion must also include the filing with the secretary of state of the originating record of the converted organization.
    - (2) Upon both the articles of conversion and the originating record of the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of creation to the converted organization or its legal representative.
  - b. If the converted organization is a foreign organization:
    - (1) That is transacting business or conducting activities in this state, then:
      - (a) The filing of the articles of conversion must include the filing with the secretary of state of an application for a certificate of authority by the converted organization.
      - (b) Upon both the articles of conversion and the application for a certificate of authority by the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of authority to the converted organization or the legal representative.
    - (2) That is not transacting business or conducting activities in this state, then, upon the articles of conversion being filed with the secretary of state, the secretary of state shall issue a certificate of conversion to the converted organization or its legal representative.
3. A converting organization that is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the articles of conversion.

**10-19.1-104.5. Abandonment of conversion.**

1. If the articles of conversion have not been filed with the secretary of state, and:
- a. If the converting organization is a corporation, then:
    - (1) Before a plan of conversion has been approved by the converting corporation as provided in section 10-19.1-104.3, it may be abandoned by an act of its board.
    - (2) After a plan of conversion has been approved by the converting corporation as provided in section 10-19.1-104.3, and before the effective date of the plan, it may be abandoned:
      - (a) If the shareholders of the converting corporation entitled to vote on the approval of the plan as provided in section 10-19.1-104.3 have approved the abandonment by an act of the shareholders; or
      - (b) If the plan provides for abandonment and if all conditions for abandonment set forth in the plan are met.
  - b. If the converting organization is not a corporation, then the abandonment of the plan of conversion must comply with its governing statute.

2. If articles of conversion have been filed with the secretary of state, but have not yet become effective, then the converting organization shall file with the secretary of state articles of abandonment that contain:
  - a. The name of the converting organization;
  - b. The provision of this section under which the plan is abandoned; and
  - c. If the plan is abandoned:
    - (1) By an act of the board under paragraph 1 of subdivision a of subsection 1, or by an act of the shareholders under subparagraph b of paragraph 2 of subdivision a of subsection 1, then the text of the resolution abandoning the plan; or
    - (2) As provided in the plan under subparagraph b of paragraph 2 of subdivision a of subsection 1, then a statement that the plan provides for abandonment and that all conditions for abandonment set forth in the plan are met.

**10-19.1-104.6. Effective date of conversion - Effect.**

1. A conversion is effective when the filing requirements of subsection 2 of section 10-19.1-104.4 have been fulfilled or on a later date specified in the articles of conversion.
2. With respect to the effect of conversion on the converting organization and on the converted organization:
  - a. An organization that has been converted as provided in sections 10-19.1-104.1 through 10-19.1-104.6 is for all purposes the same entity that existed before the conversion.
  - b. Upon a conversion becoming effective:
    - (1) If the converted organization:
      - (a) Is a corporation, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a corporation incorporated under this chapter; or
      - (b) Is not a corporation, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to the duties and liabilities as provided in its governing statute;
    - (2) All property owned by the converting organization remains vested in the converted organization;
    - (3) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;
    - (4) An action or proceeding pending by or against the converting organization may be continued as if the conversion has not occurred;
    - (5) Except as otherwise provided by other law, all rights, privileges, immunities, and powers of the converting organization remain vested in the converted organization; and
    - (6) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.
3. When a conversion becomes effective, each ownership interest in the converting organization is deemed to be converted into ownership interests in the converted organization or, in whole or in part, into money or other property to be received under the plan, subject to any dissenters' rights under section 10-19.1-87.
4. A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting corporation, if before the conversion the converting corporation was subject to suit in this state on the obligation.
5. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection as provided in section 10-01.1-13.

#### **10-19.1-105. Methods of dissolution.**

A corporation may be dissolved:

1. Before the issuance of shares, pursuant to section 10-19.1-106;
2. After the issuance of shares, pursuant to sections 10-19.1-107 through 10-19.1-113.1;  
or
3. By order of a court pursuant to sections 10-19.1-114 through 10-19.1-122.

#### **10-19.1-106. Voluntary dissolution prior to the issuance of shares.**

A corporation that has not issued shares may be dissolved by the incorporators or directors in the manner set forth in this section:

1. A majority of the incorporators or directors shall sign articles of dissolution containing:
  - a. The name of the corporation;
  - b. The date of incorporation;
  - c. A statement that shares have not been issued;
  - d. A statement that all consideration received from subscribers for shares to be issued, less expenses incurred in the organization of the corporation, has been returned to the subscribers; and
  - e. A statement that no debts remain unpaid.
2. The articles of dissolution must be filed with the secretary of state, with the fees provided for in section 10-19.1-147.
3. When the articles of dissolution have been filed with the secretary of state, the corporation is dissolved.
4. The secretary of state shall issue to the dissolved corporation or its legal representative a certificate of dissolution that contains:
  - a. The name of the corporation;
  - b. The date the articles of dissolution were filed with the secretary of state; and
  - c. A statement that the corporation is dissolved.

#### **10-19.1-107. Voluntary dissolution after the issuance of shares.**

After the issuance of shares, a corporation may be dissolved when authorized in the manner set forth in this section:

1. If the corporation has outstanding shares, then:
  - a. Written notice must be given to each shareholder, whether or not entitled to vote at a meeting of shareholders within the time and in the manner provided in section 10-19.1-73 for notice of meetings of shareholders and, whether the meeting is a regular or a special meeting, must state that a purpose of the meeting is to consider dissolving the corporation.
  - b. The proposed dissolution must be submitted for approval at a meeting of shareholders. If the proposed dissolution is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote, the dissolution must be commenced.
2. If the corporation no longer has any outstanding shares, then the directors may authorize and commence the dissolution. If the directors take that action, then:
  - a. The notice of dissolution filed under section 10-19.1-108 shall so reflect; and
  - b. The directors shall have the right to revoke the dissolution proceedings in accordance with section 10-19.1-112.

#### **10-19.1-108. Filing notice of intent to dissolve - Effect.**

1. If dissolution of the corporation is approved pursuant to subsections 1 and 2 of section 10-19.1-107, the corporation shall file with the secretary of state, with the fees provided in section 10-19.1-147, a notice of intent to dissolve. The notice must contain:
  - a. The name of the corporation;
  - b. The date and place of the meeting at which the resolution was approved pursuant to subsections 1 and 2 of section 10-19.1-107; and

- c. A statement that the requisite vote of the shareholders was received or that all shareholders entitled to vote signed a written action.
2. When the notice of intent to dissolve has been filed with the secretary of state, and subject to section 10-19.1-112, the corporation shall cease to carry on its business, except to the extent necessary for the winding up of the corporation. The shareholders shall retain the right to revoke the dissolution proceedings in accordance with section 10-19.1-112 and the right to remove directors or fill vacancies on the board. The corporate existence continues to the extent necessary to wind up the affairs of the corporation until the dissolution proceedings are revoked or articles of dissolution are filed with the secretary of state.
3. The filing with the secretary of state of a notice of intent to dissolve does not affect any remedy in favor of the corporation or any remedy against it or its directors, officers, or shareholders in those capacities, except as provided in sections 10-19.1-110, 10-19.1-110.1, and 10-19.1-124.

**10-19.1-109. Procedure in dissolution.**

1. When a notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible:
  - a. To collect or make provisions for the collection of all known debts due or owing to the corporation, including unpaid subscriptions for shares;
  - b. Except as provided in sections 10-19.1-110, 10-19.1-110.1, and 10-19.1-124, to pay or make provision for the payment of all known debts, obligations, and liabilities of the corporation according to their priorities; and
  - c. To give notice to creditors and claimants under section 10-19.1-110 or to proceed under section 10-19.1-110.1.
2. Notwithstanding section 10-19.1-104, when a notice of intent to dissolve has been filed with the secretary of state, the directors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolving corporation without a vote of the shareholders.
3. All tangible or intangible property, including money, remaining after the discharge of, or after making adequate provision for the discharge of, the debts, obligations, and liabilities of the corporation must be distributed to the shareholders in accordance with subsection 4 of section 10-19.1-92.

**10-19.1-110. Dissolution procedure for corporations that give notice to creditors and claimants.**

When a notice of intent to dissolve has been filed with the secretary of state, the corporation may give notice of the filing to each creditor of and claimant against the corporation known or unknown, present or future, and contingent or noncontingent.

1. If notice to creditors and claimants is given, it must be given by:
  - a. Publishing the notice once each week for four successive weeks in an official newspaper, as defined in chapter 46-06, in the county or counties where the registered office and the principal executive office of the corporation are located; and
  - b. Giving written notice to known creditors and claimants pursuant to subsection 39 of section 10-19.1-01.
2. The notice to creditors and claimants must contain:
  - a. A statement that the corporation is in the process of dissolving;
  - b. A statement that the corporation has filed with the secretary of state a notice of intent to dissolve;
  - c. The date of filing the notice of intent to dissolve;
  - d. The address of the office to which written claims against the corporation must be presented; and
  - e. The date by which all the claims must be received, which must be the later of ninety days after published notice or, with respect to a particular known creditor or

- claimant, ninety days after the date on which written notice was given to that creditor or claimant. Published notice is deemed given on the date of first publication for the purpose of determining this date.
3. With respect to claims against a corporation that gave notice to creditors and claimants:
    - a. The corporation has thirty days from the receipt of each claim filed according to the procedures set forth by the corporation on or before the date set forth in the notice to accept or reject the claim by giving written notice to the person submitting it. A claim not expressly rejected in this manner is deemed accepted.
    - b. A creditor or claimant to whom notice is given and whose claim is rejected by the corporation has:
      - (1) Sixty days from the date of rejection;
      - (2) One hundred eighty days from the date the corporation filed with the secretary of state the notice of intent to dissolve; or
      - (3) Ninety days after the date on which notice was given to the creditor or claimant,whichever is longer, to pursue any other remedies with respect to the claim.
    - c. A creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the corporation on or before the date set forth in the notice is barred from suing on that claim or otherwise realizing upon it or enforcing it, except as provided in section 10-19.1-124.
    - d. A creditor or claimant whose claim is rejected by the corporation under subdivision b is barred from suing on that claim or otherwise realizing upon or enforcing it, if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim within the time provided in subdivision b.
  4. Articles of dissolution for a corporation dissolving under this section that has given notice to creditors and claimants under this section must be filed with the secretary of state after:
    - a. The ninety-day period in subdivision e of subsection 2 has expired and the payment of claims of all creditors and claimants filing a claim within that period has been made or provided for; or
    - b. The longest of the periods described in subdivision b of subsection 3 has expired and there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision b of subsection 3.
  5. The articles of dissolution for a corporation that has given notice to creditors and claimants under this section must state:
    - a. The last date on which the notice was given and:
      - (1) That the payment of all creditors and claimants filing a claim within the ninety-day period in subdivision e of subsection 2 has been made or provided for; or
      - (2) The date on which the longest of the periods described in subdivision b of subsection 3 expired;
    - b. That the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with subsection 5 of section 10-19.1-92, or that adequate provision has been made for that distribution; and
    - c. That there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision b of subsection 3, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

**10-19.1-110.1. Dissolution procedure for corporations that do not give notice to creditors and claimants**

. When a notice of intent to dissolve has been filed with the secretary of state and the corporation has elected not to give notice to creditors and claimants in the manner provided in section 10-19.1-110:

1. Articles of dissolution for a corporation that has not given notice to creditors and claimants in the manner provided in section 10-19.1-110:
  - a. Must be filed with the secretary of state after:
    - (1) The payment of claims of all known creditors and claimants has been made or provided for; or
    - (2) At least two years have elapsed from the date of filing the notice of intent to dissolve; and
  - b. Must state:
    - (1) If the articles of dissolution are being filed pursuant to paragraph 1 of subdivision a, that all known debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made for payment or discharge;
    - (2) That the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with subsection 5 of section 10-19.1-92, or that adequate provision has been made for that distribution; and
    - (3) That there are no pending legal, administrative, or arbitration proceedings by or against the corporation, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.
2. With respect to claims against a corporation that does not give notice:
  - a. If a corporation has paid or provided for all known creditors or claimants at the time articles of dissolution are filed, a creditor or claimant who does not file a claim or pursue a remedy, in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it.
  - b. If the corporation has not paid or provided for all known creditors and claimants at the time articles of dissolution are filed, a person who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 10-19.1-124.

**10-19.1-111. Claims in dissolution.**

Repealed by S.L. 1993, ch. 54, § 107.

**10-19.1-112. Revocation of dissolution proceedings.**

1. Dissolution proceedings commenced pursuant to section 10-19.1-107 may be revoked prior to filing of articles of dissolution.
2. Written notice must be given to every shareholder entitled to vote at a shareholders' meeting within the time and in the manner provided in section 10-19.1-73 for notice of meetings of shareholders and must state that a purpose of the meeting is to consider the advisability of revoking the dissolution proceedings. The proposed revocation must be submitted to the shareholders at the meeting. If the proposed revocation is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote, the dissolution proceedings are revoked.
3. Revocation of dissolution proceedings is effective when a notice of revocation is filed with the secretary of state, with the fees provided in section 10-19.1-147. The corporation may resume business after this revocation.

**10-19.1-113. Articles of dissolution - Certificate of dissolution - Effect.**

Repealed by S.L. 1993, ch. 54, § 107.

**10-19.1-113.1. Filing of articles of dissolution - Effective date of dissolution - Certificate.**

1. An original of the articles of dissolution must be filed with the secretary of state. If the secretary of state determines the articles of dissolution conform to law and all fees have been paid under section 10-19.1-147, the secretary of state shall issue a certificate of dissolution.
2. When the certificate of dissolution has been issued by the secretary of state, or on a later date within thirty days after filing if the articles of dissolution so provide, the corporation is dissolved.
3. The secretary of state shall issue to the corporation, or its legal representative, a certificate of dissolution that contains:
  - a. The name of the corporation;
  - b. The date the dissolution is effective; and
  - c. A statement that the corporation was dissolved on the effective date of the dissolution.

**10-19.1-114. Supervised voluntary dissolution.**

After the notice of intent to dissolve has been filed with the secretary of state and before a certificate of dissolution has been issued, the corporation, or for good cause shown, a shareholder or creditor may apply to a court within the county in which the principal executed office or the registered office of the corporation is situated to have the dissolution conducted or continued under the supervision of the court as provided in sections 10-19.1-115 through 10-19.1-124.

**10-19.1-115. Involuntary dissolution.**

1. This section applies to corporations that are not publicly held corporations.
2. A court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business:
  - a. In a supervised voluntary dissolution pursuant to section 10-19.1-114;
  - b. In an action by a shareholder when it is established that:
    - (1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and the corporation or the parties have not provided for a procedure to resolve the dispute;
    - (2) The directors or those in control of the corporation have acted fraudulently or illegally toward one or more shareholders in their capacities as shareholders or directors of any corporation or as officers or employees of a closely held corporation;
    - (3) The directors or those in control of the corporation have acted in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders or directors of a corporation that is not a publicly held corporation or as officers or employees of a closely held corporation;
    - (4) The shareholders of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;
    - (5) The corporate assets are being misapplied or wasted; or
    - (6) The period of duration as provided in the articles has expired and has not been extended as provided in section 10-19.1-127;
  - c. In an action by a creditor when:



- (1) The claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied; or
  - (2) The corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is unable to pay its debts in the ordinary course of business; or
- d. In an action by the attorney general to dissolve the corporation in accordance with section 10-19.1-118 when it is established that a decree of dissolution is appropriate.
3. In determining whether to order equitable relief or dissolution, the court shall take into consideration the financial condition of the corporation but may not refuse to order equitable relief or dissolution solely on the ground that the corporation has accumulated or current operating profits.
4. In an action under subdivision b of subsection 2 involving a corporation that is not a publicly held corporation at the time the action is commenced and in which one or more of the circumstances described in that subdivision is established, the court, upon motion of a corporation or a shareholder or beneficial owner of shares of the corporation, may order the sale by a plaintiff or a defendant of all shares of the corporation held by the plaintiff or defendant to either the corporation or the moving shareholders, whichever is specified in the motion, if the court determines in its discretion that an order would be fair and equitable to all parties under the circumstances of the case.
  - a. The purchase price of any shares so sold must be the fair value of the shares as of the date of the commencement of the action or as of another date found equitable by the court. However, if the shares in question are then subject to sale and purchase pursuant to the bylaws of the corporation, a shareholder control agreement, the terms of the shares, or otherwise, the court shall order the sale for the price and on the terms as set forth, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.
  - b. Within five days after the entry of the order, the corporation shall provide each selling shareholder or beneficial owner with the information it is required to provide under subsection 6 of section 10-19.1-88.
  - c. If the parties are unable to agree on fair value within forty days of entry of the order, the court shall determine the fair value of the shares under the provisions of subsection 10 of section 10-19.1-88 and may allow interest or costs as provided in subsections 1 and 11 of section 10-19.1-88.
  - d. The purchase price must be paid in one or more installments as agreed on by the parties, or, if no agreement can be reached within forty days of entry of the order, as ordered by the court. Upon entry of an order for the sale of shares under this subsection and provided that the corporation or the moving shareholders post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that the full purchase price of the shares, plus any additional costs, expenses, and fees as may be awarded, will be paid when due and payable, the selling shareholders shall no longer have any rights or status as shareholders, officers, or directors, except the right to receive the fair value of their shares plus such other amounts as may be awarded.
5. In determining whether to order equitable relief or dissolution, the court shall take into consideration the duty which all shareholders in a closely held corporation owe one another to act in an honest, fair, and reasonable manner in the operation of the corporation and the reasonable expectations of the shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other. For purposes of this section, any written agreement, including an employment agreement and a buy-sell agreement, between or among shareholders or between or among one or more shareholders and the corporation is presumed to reflect the parties' reasonable expectation concerning the matters dealt with in the agreement.

6. In deciding whether to order dissolution, the court shall consider whether lesser relief suggested by one or more parties, such as any form of equitable relief, a buyout, or a partial liquidation, would be adequate to permanently relieve the circumstances established under subdivision b or c of subsection 1. Lesser relief may be ordered in any case when it would be appropriate under all the facts and circumstances of the case.
7. If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorney's fees and disbursements, to any of the other parties.
8. Proceedings under this section must be brought in a court within the county in which the principal executive office of the corporation is located. It is not necessary to make shareholders parties to the action or proceeding unless relief is sought against them personally.

**10-19.1-116. Procedure in involuntary or supervised voluntary dissolution.**

1. In dissolution proceedings the court may issue injunctions, appoint receivers with all powers and duties the court directs, take other actions required to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be held.
2. After a full hearing has been held, upon whatever notice the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a receiver to collect the corporate assets, including all amounts owing to the corporation by subscribers on account of any unpaid portion to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. A receiver has authority, subject to the order of the court, to continue the business of the corporation and to sell, lease, transfer, or otherwise dispose of all or any of the property and assets of the corporation either at public or private sale.
3. The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the following order of priority to the payment and discharge of:
  - a. The costs and expenses of the proceedings, including attorney's fees and disbursements;
  - b. Debts, taxes, and assessments due the United States, this state and its subdivisions, and other states and their subdivisions, in that order;
  - c. Claims duly proved and allowed to employees under title 65. Claims under this subdivision may not be allowed if the corporation carried workforce safety and insurance, as provided by law, at the time the injury was sustained;
  - d. Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and
  - e. Other claims duly proved and allowed.
4. After payment of the expenses of receivership and claims of creditors duly proved, the remaining assets, if any, must be distributed to the shareholders in accordance with subsection 4 of section 10-19.1-92.

**10-19.1-117. Qualifications of receivers - Powers.**

1. A receiver must be an individual, a domestic organization, or a foreign organization authorized to transact business or conduct activities in this state. A receiver shall give bond as directed by the court with the sureties required by the court.
2. A receiver may sue and defend in all courts as receiver of the corporation. The court appointing the receiver has exclusive jurisdiction of the corporation and its property.

**10-19.1-118. Action by attorney general.**

1. A corporation may be dissolved involuntarily by a decree of a court in this state in an action filed by the attorney general when it is established that:
  - a. The articles and certificate of incorporation were procured through fraud;
  - b. The corporation was incorporated for a purpose not permitted by section 10-19.1-08;
  - c. The corporation failed to comply with the requirements of sections 10-19.1-02 through 10-19.1-24 essential to incorporation under or election to become governed by this chapter;
  - d. The corporation has failed for thirty days to appoint and maintain a registered agent in this state as provided in chapter 10-01.1;
  - e. The corporation has failed for thirty days after change of its registered office or registered agent to file in the office of the secretary of state a statement of such change as provided in chapter 10-01.1; or
  - f. The corporation has acted, or failed to act, in a manner that constitutes surrender or abandonment of the corporate franchise, privileges, or enterprise.
2. An action may not be commenced under this section until thirty days after notice to the corporation by the attorney general of the reason for the filing of the action. If the reason for filing the action is an act that the corporation has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles or bylaws or by performance of or abstention from the act, the attorney general shall give the corporation thirty additional days in which to effect the correction before filing the action.

**10-19.1-119. Filing claims in proceedings to dissolve.**

1. In proceedings referred to in section 10-19.1-115 to dissolve a corporation, the court may require all creditors and claimants of the corporation to file their claims under oath with the clerk of court or with the receiver in a form prescribed by the court.
2. If the court requires the filing of claims, it shall fix a date, which may not be less than one hundred twenty days from the date of the order, as the last day for the filing of claims, and shall prescribe the notice of the fixed date that must be given to creditors and claimants. Before the fixed date, the court may extend the time for filing claims. Creditors and claimants failing to file claims on or before the fixed date may be barred, by order of court, from claiming an interest in or receiving payment out of the property or assets of the corporation.

**10-19.1-120. Discontinuance of dissolution proceedings.**

The involuntary or supervised voluntary dissolution of a corporation must be discontinued at any time during the dissolution proceedings when it is established that cause for dissolution no longer exists. When this is established, the court shall dismiss the proceedings and direct the receiver, if any, to redeliver to the corporation all its remaining property and assets.

**10-19.1-121. Decree of dissolution.**

1. In an involuntary or supervised voluntary dissolution after the costs and expenses of the proceedings and all debts, obligations, and liabilities of the corporation have been paid or discharged and all of its remaining property and assets have been distributed to its shareholders or, if its property and assets are not sufficient to satisfy and discharge the costs, expenses, debts, obligations, and liabilities, when all the property and assets have been applied so far as they will go to their payment according to the priorities set forth in section 10-19.1-116, the court shall enter a decree dissolving the corporation.
2. When the decree dissolving the corporation has been entered, the corporation is dissolved.

**10-19.1-122. Filing decree.**

After the court enters a decree dissolving a corporation, the clerk of court shall cause a certified copy of the decree to be filed with the secretary of state. The secretary of state may not charge a fee for filing the decree.

**10-19.1-123. Deposit with administrator of abandoned property of amount due certain shareholders - Appropriation.**

Upon dissolution of a corporation, the portion of the assets distributable to a person who is unknown or cannot be found must be reduced to money and deposited with the administrator of abandoned property for disposition pursuant to chapter 47-30.2. The amount deposited is appropriated to the administrator of abandoned property and must be paid over to the person or a legal representative, upon proof satisfactory to the administrator of abandoned property of a right to payment.

**10-19.1-124. Claims barred - Exceptions.**

1. A person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within the time provided in section 10-19.1-110, 10-19.1-110.1, 10-19.1-114, 10-19.1-115, or 10-19.1-119, or has not begun a legal, administrative, or arbitration proceeding before the beginning of the dissolution proceedings, and a person claiming through or under the creditor or claimant, is barred from bringing that claim or otherwise realizing upon or enforcing it, except as provided in this section.
2. At any time within one year after articles of dissolution have been filed with the secretary of state, or a decree of dissolution has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim:
  - a. Against the corporation to the extent of undistributed assets; or
  - b. If the undistributed assets are not sufficient to satisfy the claim, against a shareholder, whose liability is limited to a portion of the claim that is equal to the portion of the distributions to shareholders in liquidation or dissolution received by the shareholder, but in no event may a shareholder's liability exceed the amount which that shareholder actually received in the dissolution.
3. All known contractual debts, obligations, and liabilities incurred in the course of winding up the corporation's affairs shall be paid by the corporation before the distribution of assets to a shareholder. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy against the officers and directors of the corporation who are responsible for, but who fail to cause the corporation to pay or make provision for, payment of the debts, obligations, and liabilities, or against shareholders to the extent permitted under section 10-19.1-94. This subsection does not apply to dissolution under the supervision or order of a court.
4. Any statutory and common-law rights of persons who may bring claims of injury to a person, including death, are not affected by dissolution under this chapter.

**10-19.1-125. Right to sue or defend after dissolution.**

After a corporation has been dissolved, any of its former officers, directors, or shareholders may assert or defend, in the name of the corporation, any claim by or against the corporation.

**10-19.1-126. Omitted assets.**

Title to assets remaining after payment of all debts, obligations, or liabilities and after distributions to shareholders may be transferred by a court in this state.

**10-19.1-127. Extension after duration expired.**

1. A corporation whose period of duration as provided in the articles has expired and which has continued to do business despite that expiration may reinstate its articles

and extend the period of duration, including making the duration perpetual, within one year after the date of expiration by filing an amendment to the articles as set forth in this section.

2. An amendment to the articles must be approved by the board and must include:
  - a. The date on which the period of duration expired under the articles;
  - b. A statement that the period of duration will be perpetual or, if some shorter period is to be provided, the date to which the period of duration is extended; and
  - c. A statement that the corporation has been in continuous operation since before the date of expiration of its original period of duration.
3. The amendment to the articles must be presented, after notice, at a meeting of the shareholders. The amendment is adopted when approved by the shareholders pursuant to section 10-19.1-19.
4. Articles of amendment, together with any fees and delinquent filings and reports, conforming to section 10-19.1-21 must be filed with the secretary of state.

**10-19.1-128. Effect of extension.**

Filing with the secretary of state of articles of amendment extending the period of duration of a corporation:

1. Relates back to the date of expiration of the original period of duration of the corporation as provided in the articles;
2. Validates contracts or other acts within the authority of the articles, and the corporation is liable for those contracts or acts; and
3. Restores to the corporation all the assets and rights of the corporation to the extent they were held by the corporation before expiration of its original period of duration, except those sold or otherwise distributed after that time.

**10-19.1-129. Service of process on corporation, foreign corporation, and nonresident directors.**

Any process, notice, or demand required or permitted by law to be served on the corporation, the foreign corporation, or any director may be served as provided in section 10-01.1-13.

**10-19.1-130. State interested - Proceedings.**

If it appears at any stage of a proceeding in a court in this state that the state is, or is likely to be, interested therein, or that it is a matter of general public interest, the court shall order that a copy of the complaint or petition be served upon the attorney general in the same manner prescribed for serving a summons in a civil action. The attorney general shall intervene in a proceeding when the attorney general determines that the public interest requires it, whether or not the attorney general has been served.

**10-19.1-131. Foreign trade zones.**

Repealed by S.L. 1999, ch. 50, § 79.

**10-19.1-132. Foreign corporation - Governing law.**

1. Subject to the constitution of this state, the laws of the jurisdiction under which a foreign corporation is incorporated govern its incorporation and internal activities.
  - a. Nothing in this chapter authorizes this state to regulate the incorporation or internal activities of a foreign corporation.
  - b. A foreign corporation may not be denied a certificate of authority to conduct activities in this state by reason of any difference between the laws of the jurisdiction under which the foreign corporation was incorporated and the laws of this state.
2. A foreign corporation holding a valid certificate of authority in this state has no greater rights and privileges than a domestic corporation. The certificate of authority does not

authorize the foreign corporation to exercise any of its powers or purposes that a domestic corporation is forbidden by law to exercise in this state.

3. A foreign corporation may not be denied a certificate of authority to conduct activities in this state by reason of any difference between the laws of the jurisdiction under which the foreign corporation is incorporated and the laws of this state.

**10-19.1-133. Foreign corporation - Name.**

A foreign corporation may apply for a certificate of authority under any name that would be available to a domestic corporation, whether or not the name is the name under which it is authorized in its jurisdiction of incorporation. A trade name must be registered as provided in chapter 47-25 when applying for a certificate of authority under a name different from the name authorized in the jurisdiction of incorporation.

**10-19.1-134. Foreign corporation - Admission of foreign corporation - Transacting business - Obtaining licenses and permits.**

A foreign corporation may not:

1. Transact business in this state or obtain any license or permit required by this state until it has procured a certificate of authority from the secretary of state.
2. Transact any business in this state prohibited to a domestic corporation incorporated under this chapter.
3. Be denied a certificate of authority because the laws of the state or country where the corporation is incorporated differ from the laws of this state.

**10-19.1-135. Foreign corporation application for certificate of authority.**

1. An applicant for a certificate shall file with the secretary of state an application executed by an authorized person on forms prescribed by the secretary of state and setting forth:
  - a. The name of the foreign corporation and, if different, the name under which it proposes to transact business in this state;
  - b. The jurisdiction of its incorporation;
  - c. The date of incorporation in the jurisdiction of its incorporation and the period of duration of the foreign corporation;
  - d. The address of the principal executive office of the foreign corporation;
  - e. The name of the registered agent of the foreign corporation as provided in chapter 10-01.1, and if a noncommercial registered agent, the address of such noncommercial registered agent in this state;
  - f. The purpose of the corporation which it proposes to pursue in transacting business in this state;
  - g. The names and addresses of the directors and officers of the foreign corporation; and
  - h. Any additional information deemed necessary or appropriate by the secretary of state to enable the secretary of state to determine whether the foreign corporation is entitled to a certificate of authority to transact business in this state.
2. The application must be accompanied by payment of the fees provided in section 10-19.1-147 together with a certificate of good standing or a certificate of existence duly authenticated by the incorporating officer of the state or country where the corporation is incorporated.

**10-19.1-136. Foreign corporation - Issuance of certificate of authority.**

If the secretary of state finds an application for a certificate of authority conforms to law and all fees have been paid, the secretary shall:

1. Endorse on the application the word "filed" and the date of the filing;
2. File the application and the certificate of good standing or certificate of existence; and
3. Issue to the corporation or its representative a certificate of authority to transact business in this state.

**10-19.1-137. Foreign corporation - Amendments to the certificate of authority.**

If any statement in the application for a certificate of authority by a foreign corporation is false when made or the foreign corporation changes the foreign corporation's name or purposes sought in this state, the foreign corporation promptly shall file with the secretary of state an application for an amended certificate of authority executed by an authorized person on forms prescribed by the secretary of state correcting the statement and, in the case of a change in the foreign corporation's name, a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated.

1. In the case of a dissolution, a foreign corporation need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated.
2. A foreign corporation that changes the foreign corporation's name and applies for an amended certificate of authority, and is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state, shall change the foreign corporation's name in each of the foregoing registrations that is applicable when the foreign corporation files an application for an amended certificate of authority.

**10-19.1-138. Foreign corporation - Registered agent - Registered office.**

A foreign corporation authorized to transact business in this state shall continuously maintain a registered agent in this state as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of such noncommercial registered agent in this state.

**10-19.1-139. Foreign corporation - Merger of foreign corporation authorized to transact business in this state.**

If a foreign corporation authorized to transact business in this state is a party to a statutory merger permitted by the laws of the jurisdiction under which the foreign corporation is incorporated, and the foreign corporation is not the surviving organization, the surviving organization shall, within thirty days after the merger becomes effective, file with the secretary of state a certified statement of merger duly authenticated by the proper officer of the state or country where the statutory merger was effected. Any foreign organization that is the surviving organization in a merger and which will continue to transact business in this state shall procure a certificate of authority if not previously authorized to transact business in the state.

**10-19.1-139.1. Foreign corporation - Conversion of foreign corporation authorized to transact business in this state.**

If a foreign corporation authorized to transact business in this state converts to another organization permitted by its governing statute, within thirty days after the conversion becomes effective, the newly created organization resulting from the conversion shall file with the secretary of state a certified statement of conversion duly authenticated by the proper officer of the jurisdiction in which the statutory conversion was effected. Any foreign organization that is the converted organization in a conversion and which will continue to transact business in this state shall obtain a certificate of authority or applicable registration in accordance with the North Dakota governing statute applicable to the converted organization.

**10-19.1-140. Foreign corporation - Certificate of withdrawal.**

1. A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign corporation shall file with the secretary of state an application for withdrawal, on forms prescribed by the secretary of state, together with the fees provided in section 10-19.1-147, which must set forth:

- a. The name of the corporation and the state or country under the laws of which it is incorporated;
  - b. That the corporation is not transacting business in this state;
  - c. That the corporation surrenders its authority to transact business in this state;
  - d. That service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation as provided in section 10-01.1-13;
  - e. A post-office address to which a person may mail a copy of any process against the corporation; and
  - f. Any additional information necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees payable by the foreign corporation.
2. The filing with the secretary of state of a certificate of dissolution, or a certificate of merger if the corporation is not the surviving organization, from the proper officer of the state or country under the laws of which the corporation is incorporated constitutes a valid application of withdrawal and the authority of the corporation to transact business in this state shall cease upon filing of the certificate.

**10-19.1-141. Foreign corporation - Revocation of certificate of authority.**

Repealed by S.L. 2015, ch. 86, § 24.

**10-19.1-142. Foreign corporation - Transaction of business without certificate of authority.**

1. A foreign corporation transacting business in this state may not maintain any claim, action, suit, or proceeding in any court of this state until it possesses a certificate of authority.
2. The failure of a foreign corporation to obtain a certificate of authority does not impair the validity of any contract or act of the foreign corporation or prevent the foreign corporation from defending any claim, action, suit, or proceeding in any court of this state.
3. A foreign corporation, by transacting business in this state without a certificate of authority, appoints the secretary of state as its agent upon whom any notice, process, or demand may be served.
4. A foreign corporation that transacts business in this state without a valid certificate of authority is liable to the state for the years or parts of years during which it transacted business in this state without the certificate in an amount equal to all fees that would have been imposed by this chapter upon that corporation had it duly obtained the certificate, filed all reports required by this chapter, and paid all penalties imposed by this chapter. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section.
5. A foreign corporation that transacts business in this state without a valid certificate of authority is subject to a civil penalty, payable to the state, and not to exceed five thousand dollars. Each director and each officer or agent who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign corporation that does not have a certificate is subject to a civil penalty, payable to the state, and not to exceed one thousand dollars.
6. The civil penalties set forth in subsection 5 may be recovered in an action brought within the district court of Burleigh County by the attorney general. Upon a finding by the court that a foreign corporation or any of its members, directors, officers, or agents have transacted business in this state in violation of this chapter, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining the further transaction of the business of the foreign corporation and the further exercise of any rights and privileges by the corporation in this state. The foreign corporation must be enjoined from transacting business in this state until all civil penalties plus any interest



and court costs that the court may assess have been paid and until the foreign corporation has otherwise complied with the provisions of this chapter.

7. A member of a foreign corporation is not liable for the debts and obligations of the corporation solely by reason of the corporation having transacted business in this state without a valid certificate of authority.

**10-19.1-143. Foreign corporation - Transactions not constituting transacting business.**

1. The following activities of a foreign corporation, among others, do not constitute transacting business within the meaning of this chapter:
  - a. Maintaining, defending, or settling any proceeding;
  - b. Holding meetings of its shareholders or carrying on any other activities concerning its internal activities;
  - c. Maintaining bank accounts;
  - d. Maintaining offices or agencies for the transfer, exchange, and registration of the foreign corporation's own securities or maintaining trustees or depositories with respect to those securities;
  - e. Selling through independent contractors;
  - f. Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this state before they become contracts;
  - g. Creating or acquiring indebtedness, mortgages, and security interest in real or personal property;
  - h. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts; or
  - i. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like manner.
2. The term "transacting business" as used in this section has no effect on personal jurisdiction under the North Dakota Rules of Civil Procedure.
3. For purposes of this section, any foreign corporation that owns income-producing real or tangible personal property in this state, other than property exempted under subsection 1, will be considered transacting business in this state.
4. The list of activities in subsection 1 is not exhaustive. This section does not apply in determining the contracts or activities that may subject a foreign corporation to service of process or taxation in this state or to regulation under any other law of this state.

**10-19.1-144. Foreign corporation - Action by attorney general.**

The attorney general may bring an action to restrain a foreign corporation from transacting business in this state in violation of this chapter.

**10-19.1-145. Foreign corporation - Service of process.**

Service of process on a foreign corporation must be as provided in section 10-01.1-13.

**10-19.1-146. Secretary of state - Annual report of corporations and foreign corporations - Involuntary dissolution - Revocation of certificate of authority.**

1. Each corporation and each foreign corporation authorized to transact business in this state shall file, within the time provided in subsection 3, an annual report setting forth:
  - a. The name of the corporation or foreign corporation and the state or country under the laws of which the corporation or foreign corporation is incorporated.
  - b. The address of the registered office of the corporation or foreign corporation in this state, the name of the corporation's or foreign corporation's registered agent in this state at that address, and the address of the corporation's or foreign corporation's principal executive office.
  - c. A brief statement of the character of the business in which the corporation or foreign corporation is actually engaged in this state.

- d. The names and respective addresses of the officers and directors of the corporation or foreign corporation.
  - e. In the case of a domestic corporation, a statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
  - f. In the case of a domestic corporation, a statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection 58 of section 10-19.1-01. If the corporation or foreign corporation is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or foreign corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.
  3. Except for the first annual report, the annual report must be delivered to the secretary of state:
    - a. By a corporation, before August second of each year; and
    - b. By a foreign corporation, before May sixteenth of each year.The first annual report of either a corporation or foreign corporation must be delivered before the date provided in the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state, or in the case of a corporation, in the year following the calendar year of the effective date stated in the articles of incorporation.
  4. The secretary of state must file the annual report if the annual report conforms to the requirements of this section and all fees have been paid as provided in section 10-19.1-147.
    - a. If the annual report does not conform, it must be returned to the corporation or foreign corporation for any necessary correction or payment.
    - b. If the annual report is corrected and filed before the date provided in subsection 3, or within thirty days after the annual report was returned by the secretary of state for correction, then the penalties provided in section 10-19.1-147 for the failure to file an annual report within the time provided do not apply.
  5. Three months after the date provided in subsection 3, any corporation or foreign corporation failing to file its annual report is not in good standing. After the corporation or foreign corporation becomes not in good standing, the secretary of state shall notify the corporation or foreign corporation that its certificate of incorporation or certificate of authority is not in good standing and that it may be dissolved or revoked as provided in subsection 6 or 7.
    - a. The secretary of state must mail the notice of impending dissolution or revocation to the last registered agent at the last registered office.
    - b. If the corporation or foreign corporation files its annual report after the notice is mailed, together with the filing fee and the late filing penalty fee provided in section 10-19.1-147, then the secretary of state shall restore its certificate of incorporation or certificate of authority to good standing.
  6. A corporation that fails to file its annual report, together with the filing and penalty fees for late filing provided in section 10-19.1-147, within one year after the date provided in subsection 3 ceases to exist as a corporation and is considered involuntarily dissolved by operation of law.
    - a. The secretary of state shall note the dissolution of the corporation's certificate of incorporation on the records of the secretary of state and shall give notice of the action to the dissolved corporation.
    - b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office.

7. A foreign corporation that fails to file its annual report, together with the filing and penalty fees for late filing provided in section 10-19.1-147, within one year after the date provided in subsection 3 forfeits its authority to transact business in this state.
  - a. The secretary of state shall note the revocation of the foreign corporation's certificate of authority on the records of the secretary of state and shall give notice of the action to the foreign corporation.
  - b. Notice by the secretary of state must be mailed to the foreign corporation's last registered agent at the last registered office.
  - c. The decision by the secretary of state that a certificate of authority must be revoked under this subsection is final.
8. A corporation dissolved for failure to file an annual report, or a foreign corporation whose authority was forfeited for failure to file an annual report, may be reinstated by filing the most recent past-due report, together with the filing and penalty fees for all past-due annual reports and a reinstatement fee as provided in section 10-19.1-147. The fees must be paid and an annual report filed within one year following the involuntary dissolution or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the dissolution or revocation to the reinstatement.

**10-19.1-146.1. Secretary of state - Involuntary dissolution - Revocation of certificate of authority.**

1. With respect to involuntary dissolution of a corporation by the secretary of state:
  - a. A corporation may be involuntarily dissolved by the secretary of state if:
    - (1) The corporation has failed to appoint and maintain a registered agent and registered office as provided in section 10-19.1-15; or
    - (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the corporation pursuant to this chapter.
  - b. A corporation may not be dissolved by the secretary of state as provided for in this section unless:
    - (1) The secretary of state has given the corporation not less than sixty days' notice by mail addressed to its registered agent at the registered office in this state or, if the corporation does not maintain a registered agent in this state, the notice must be mailed to its principal office; and
    - (2) During the sixty-day period, the corporation has failed to:
      - (a) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent;
      - (b) File any other required record; or
      - (c) Correct the misrepresentation.
  - c. Upon expiration of sixty days after the mailing of the notice, the existence of the corporation ceases. The secretary of state shall issue a notice of dissolution and shall mail the notice addressed to its registered agent at the registered office in this state or, if the corporation does not maintain a registered agent in this state, the notice must be mailed to its principal office.
2. With respect to the revocation of a certificate of authority of a foreign corporation by the secretary of state:
  - a. The certificate of a foreign corporation to transact business in this state may be revoked by the secretary of state if:
    - (1) The foreign corporation has failed to:
      - (a) Appoint and maintain a registered agent and registered office as provided in section 10-19.1-138;
      - (b) File with the secretary of state any amendment to its application for a certificate of authority as provided in section 10-19.1-137;
      - (c) File with the secretary of state any merger as provided in section 10-19.1-139; or

- (d) File with the secretary of state an application for certificate of withdrawal of its authority as provided in section 10-19.1-140 when the corporation's existence has expired or the foreign corporation has been dissolved in the jurisdiction of the foreign corporation; or
    - (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign corporation under this chapter.
  - b. A certificate of authority may not be revoked by the secretary of state as provided for in this section unless:
    - (1) The secretary of state has given the foreign corporation not less than sixty days' notice by mail addressed to its registered agent at the registered office in this state or, if the corporation failed to maintain a registered agent in this state, the notice must be mailed to its principal office; and
    - (2) During the sixty-day period, the foreign corporation has failed to:
      - (a) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent;
      - (b) File any amendment;
      - (c) File any merger;
      - (d) File an application for withdrawal;
      - (e) File any other required record; or
      - (f) Correct the misrepresentation.
  - c. Upon expiration of sixty days after the mailing of the notice, the authority of the foreign corporation to transact business in this state ceases. The secretary of state shall issue a notice of revocation and shall mail the notice to the registered agent at the registered office in this state or, if the foreign corporation failed to maintain a registered agent in this state, the notice must be mailed to its principal office.
3. If the corporation or foreign corporation files a report of change relating to the registered agent or any other required record or correction of a misrepresentation after the notice with the fee provided for in section 10-19.1-147, the secretary of state shall restore the certificate of incorporation or authority to good standing. Until restored to good standing, the secretary of state may not accept for filing any document respecting the corporation or foreign corporation except those incident to its dissolution or withdrawal.

**10-19.1-147. Fees for filing records - Issuing certificates - License fees.**

The secretary of state shall charge and collect for:

1. Filing articles of incorporation and issuing a certificate of incorporation, one hundred dollars.
2. Filing articles of amendment, twenty dollars.
3. Filing a statement of correction, twenty dollars.
4. Filing restated articles of incorporation, thirty dollars.
5. Filing articles of conversion of a corporation or a certificate of fact of conversion of a foreign corporation, fifty dollars and:
  - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
6. Filing abandonment of conversion, fifty dollars.
7. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
8. Filing articles of abandonment of merger, fifty dollars.

9. Filing an application to reserve a corporate name, ten dollars.
10. Filing a notice of transfer of a reserved corporate name, ten dollars.
11. Filing a cancellation of reserved corporate name, ten dollars.
12. Filing a consent to use of name, ten dollars.
13. Filing a statement of change of address of registered office, change of registered agent, or both, or a change of address of registered office by registered agent, the fee provided in section 10-01.1-03.
14. Filing a statement of the establishment of a series of shares, twenty dollars.
15. Filing a statement of cancellation of shares, twenty dollars.
16. Filing a statement of reduction of stated capital, twenty dollars.
17. Filing a statement of intent to dissolve, ten dollars.
18. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
19. Filing articles of dissolution, twenty dollars.
20. Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, one hundred forty-five dollars.
21. Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, forty dollars.
22. Filing a certificate of fact stating a merger or consolidation of a foreign corporation holding a certificate of authority to transact business in this state, fifty dollars.
23. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
24. Filing an annual report of a corporation or foreign corporation, twenty-five dollars.
  - a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
    - (1) Within ninety days after the date provided in subsection 3 of section 10-19.1-146, twenty dollars;
    - (2) Thereafter, sixty dollars; and
    - (3) After the involuntary dissolution of a corporation, or the revocation of the certificate of authority of a foreign corporation, the reinstatement fee of one hundred thirty-five dollars.
  - b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-19.1-146, or the annual report lacks sufficient payment as required by this subsection.
25. Filing any process, notice, or demand for service, the fee provided in section 10-01.1-03.
26. Furnishing a certified copy of any record, instrument, or paper relating to a corporation, the fee provided in section 54-09-04 for copying a record and fifteen dollars for the certificate and affixing the seal thereto.
27. Any record submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.
28. Filing any other statement of a corporation or foreign corporation, ten dollars.

**10-19.1-148. Secretary of state - Powers - Enforcement - Penalty - Appeal.**

1. The secretary of state has the power and authority reasonably necessary to efficiently administer this chapter and to perform the duties imposed thereby.
2. The secretary of state may propound to any corporation or foreign corporation that is subject to this chapter and to any officer, director, or employee thereof, any interrogatory reasonably necessary and proper to ascertain whether the corporation has complied with all provisions of this chapter applicable to the corporation.
  - a. The interrogatory must be answered within thirty days after mailing, or within any additional time as must be fixed by the secretary of state. The answer to the interrogatory must be full and complete and must be made in writing and under oath.

- b. If the interrogatory is directed:
    - (1) To an individual, it must be answered by that individual; or
    - (2) To a corporation, it must be answered by the president, vice president, secretary, or assistant secretary of the corporation.
  - c. The secretary of state is not required to file any record to which the interrogatory relates until the interrogatory has been answered, and not then if the answers disclose the record is not in conformity with this chapter.
  - d. The secretary of state shall certify to the attorney general, for action the attorney general may deem appropriate, an interrogatory and answers thereto, which discloses a violation of this chapter.
  - e. Each officer, director, or employee of a corporation or foreign corporation who fails or refuses within the time provided by subdivision a to answer truthfully and fully an interrogatory propounded to that person by the secretary of state is guilty of an infraction.
  - f. An interrogatory propounded by the secretary of state and the answers are not open to public inspection. The secretary of state may not disclose any facts or information obtained from the interrogatory or answers except insofar as permitted by law or insofar as required for evidence in any criminal proceedings or other action by this state.
3. If the secretary of state rejects any record required by this chapter to be approved by the secretary of state before the record may be filed, then the secretary of state shall give written notice of the rejection to the person that delivered the record, specifying the reasons for rejection.
- a. Within thirty days after the service of the notice of denial, the corporation or foreign corporation, as the case may be, may appeal to the district court in the judicial district serving Burleigh County by filing with the clerk of the court a petition setting forth a copy of the record sought to be filed and a copy of the written rejection of the record by the secretary of state.
  - b. The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take the action the court determines proper.
4. If the secretary of state dissolves a corporation or revokes the certificate of authority to transact business in this state of any foreign corporation, pursuant to section 10-19.1-146.1, then the corporation or foreign corporation may appeal to the district court in the judicial district serving Burleigh County by filing with the clerk of the court a petition, including:
- a. A copy of the corporation's articles of incorporation and a copy of the notice of dissolution given by the secretary of state; or
  - b. A copy of the certificate of authority of the foreign corporation to transact business in this state and a copy of the notice of revocation given by the secretary of state.
- The court shall try the matter de novo. The court shall sustain the action of the secretary of state or direct the secretary of state to take the action the court determines proper.
5. If the court order sought is one for reinstatement of a corporation that has been dissolved as provided in subsection 6 of section 10-19.1-146, or for reinstatement of the certificate of authority of a foreign corporation that has been revoked as provided in subsection 7 of section 10-19.1-146, then together with any other actions the court deems proper, any such order which reverses the decision of the secretary of state shall require the corporation or foreign corporation to:
- a. File the most recent past-due annual report;
  - b. Pay the fees to the secretary of state for all past-due annual reports as provided in subsection 24 of section 10-19.1-147; and
  - c. Pay the reinstatement fee to the secretary of state as provided in subsection 24 of section 10-19.1-147.

6. Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state are treated as other civil actions.

**10-19.1-148.1. Delivery to and filing of records by secretary of state and effective date.**

1. A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the purpose of the record, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the secretary of state determines that a record complies with the filing requirements of this chapter, then the secretary of state shall file the record and return a copy of the filed record to the person who delivered it to the secretary of state for filing. That person shall then send a copy of the filed record to the person on whose behalf the record was filed.
2. Upon request and payment of a fee provided in section 10-19.1-147, the secretary of state shall send to the requester a certified copy of the requested record.
3. Except as otherwise specifically provided in this chapter, a record delivered to the secretary of state for filing under this chapter may specify a delayed effective date within ninety days. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:
  - a. If a record does not specify a delayed effective date within ninety days, then on the date the record is filed as evidenced by the endorsement of the secretary of state of the date on the record.
  - b. If the record specifies a delayed effective date within ninety days, then on the specified date.

**10-19.1-148.2. Correcting a filed record.**

With respect to correction of a filed record:

1. Whenever a record authorized by this chapter to be filed with the secretary of state has been filed and inaccurately records the action referred to in the record, contains an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged, or verified, the record may be corrected by filing a statement of correction.
2. A statement of correction:
  - a. Must:
    - (1) Be signed by:
      - (a) The person that signed the original record; or
      - (b) By a person authorized to sign on behalf of that person;
    - (2) Set forth the name of the corporation that filed the record;
    - (3) Identify the record to be corrected by description and by the date of its filing with the secretary of state;
    - (4) Identify the inaccuracy, error, or defect to be corrected; and
    - (5) Set forth a statement in corrected form of the portion of the record to be corrected.
  - b. May not revoke or nullify the record.
3. The statement of correction must be filed with the secretary of state.
4. With respect to the effective date of correction:
  - a. A certificate issued by the secretary of state before a record is corrected, with respect to the effect of filing the original record, is considered to be applicable to the record as corrected as of the date the record as corrected is considered to have been filed under this subsection.
  - b. After a statement of correction has been filed with the secretary of state, the original record as corrected is considered to have been filed:
    - (1) On the date the statement of correction was filed:
      - (a) As to persons adversely affected by the correction; and
      - (b) For the purposes of subsection 3 of section 10-19.1-01.2; and

- (2) On the date the original record was filed as to all other persons and for all other purposes.

**10-19.1-149. Secretary of state - Certificates and certified copies to be received in evidence.**

1. All certificates issued by the secretary of state and all copies of records filed in accordance with this chapter, when certified by the secretary of state, may be taken and received in all courts, public offices, and official bodies as evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing records or certificates, may be taken and received in all courts, public offices, and official bodies as evidence of the existence or nonexistence of the facts stated.
3. Any certificate or certified copy issued by the secretary of state under this section may be created and disseminated as an electronic record with the same force and effect as if produced in a paper form.

**10-19.1-149.1. Secretary of state - Confidential records.**

Any social security number or federal tax identification number disclosed or contained in any record filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any record is released to the public.

**10-19.1-150. Secretary of state - Forms to be furnished by the secretary of state.**

All annual reports required by this chapter to be filed in the office of the secretary of state must be made on forms prescribed by the secretary of state. Forms for all other records to be filed in the office of the secretary of state may be furnished by the secretary of state upon request. However, the use of such records, unless otherwise specifically required by law, is not mandatory.

**10-19.1-151. Miscellaneous - Foreign trade zones.**

1. As used in this section, unless the context otherwise requires:
  - a. "Act of Congress" means the Act of Congress approved June 18, 1934, entitled an Act to provide for the establishment, operation, and maintenance of foreign trade zones and ports of entry of the United States, to expedite and encourage foreign commerce and for other purposes, as amended, and commonly known as the Foreign Trade Zone Act of 1934 [48 Stat. 998; 19 U.S.C. 81a et seq.].
  - b. "Private corporation" means a corporation authorized under this chapter, one of the purposes of which is to establish, operate, and maintain a foreign trade zone by itself or in conjunction with a public corporation.
  - c. "Public corporation" means this state, a political subdivision of this state, any municipality of this state, any public agency of this state, or any other corporate instrumentality of this state.
2. Any private corporation or public corporation has the power to apply to the proper authorities of the United States for a grant of the privilege of establishing, operating, and maintaining foreign trade zones and foreign trade subzones and to do all things necessary and proper to carry into effect the establishment, operation, and maintenance of such zones, all in accordance with the Act of Congress and other applicable laws and rules.

**10-19.1-152. Audit reports and audit of corporations receiving state subsidies for production of alcohol or methanol for combination with gasoline.**

Any corporation that produces agricultural ethyl alcohol or methanol within this state and which receives a production subsidy from the state, whether in the form of reduced taxes or



otherwise, shall submit an annual audit report, prepared by a certified public accountant based on an audit of all records and accounts of the corporation, to the legislative audit and fiscal review committee. The audit must be submitted within ninety days of the close of the corporation's taxable year. Upon request of the legislative audit and fiscal review committee, the state auditor shall conduct an audit of the records and accounts of any corporation required to submit an annual report under this section.