Title 13-C: MAINE BUSINESS CORPORATION ACT

Chapter 7: SHAREHOLDERS

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Subchapter 1: MEETINGS

§701. ANNUAL MEETING

1. **Annual meeting required; exceptions.** Unless directors are elected by written consent in lieu of an annual meeting as permitted by section 704, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws, except that, if a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to section 730, subsection 3, directors may not be elected by less than unanimous written consent.

[2007, c. 289, §5 (AMD) .]

2. **Place.** Annual shareholders' meetings may be held in or out of the State at the place stated in or fixed in accordance with a corporation's bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings must be held at the corporation's principal office.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

3. **Failure to hold meeting.** The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2007, c. 289, §5 (AMD).

§702. SPECIAL MEETING

1. **Special meeting required.** A corporation shall hold a special meeting of its shareholders:

A. On call of the board of directors or the person or persons authorized to do so by its articles of incorporation or bylaws; or [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. If shareholders holding at least 10% of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held, except that the articles of incorporation may fix a lower percentage or a higher percentage not exceeding 25% of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting. [2015, c. 259, §6 (AMD).]

[2015, c. 259, §6 (AMD) .]

2. **Record date for determining entitlement to special meeting.** If not otherwise fixed under section 703 or 707, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

3. **Place of special meetings.** Special meetings may be held in or out of this State at the place stated in or fixed in accordance with the corporation's bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings must be held at the corporation's principal office.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

4. **Scope of special meeting.** Only business within the purpose or purposes described in the meeting notice required by section 705, subsection 3 may be conducted at a special meeting.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2015, c. 259, §6 (AMD).

§703. COURT-ORDERED MEETING

1. **Shareholder application.** The Superior Court of the county in which a corporation's principal office is located, or, if the principal office is not located in this State, of Kennebec County, may summarily order a meeting to be held:

A. On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held or action by written consent in lieu of an annual meeting did not become effective within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting; or [2007, c. 289, §6 (AMD).]

B. On application of a shareholder who signed a demand for a special meeting valid under section 702 if:

(1) Notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation clerk; or

(2) The special meeting was not held in accordance with the notice required by section 705, subsection 3. [2003, c. 344, Pt. B, §59 (AMD).]

[2007, c. 323, Pt. C, §12 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

2. **Court may prescribe specifics.** The Superior Court may fix the time and place of a meeting ordered pursuant to this section, determine the shares entitled to participate in the meeting, specify a record date or dates for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters and enter other orders necessary to accomplish the purpose or purposes of the meeting.

[2011, c. 274, §17 (AMD) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §B59 (AMD). 2007, c. 289, §6 (AMD). 2007, c. 323, Pt. C, §12 (AMD). 2007, c. 323, Pt. G, §4 (AFF). 2011, c. 274, §17 (AMD).

§704. ACTION WITHOUT MEETING

1. **Permissible action by unanimous consent.** Action required or permitted by this Act to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents bearing the date of signature and describing the action taken, signed by all the shareholders entitled to vote on the action and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

1-A. **Permissible action by majority consent.** The articles of incorporation may provide that any action required or permitted by this Act to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action so taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consent must bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

[2007, c. 289, §7 (NEW) .]

2. **Record date.** If not otherwise fixed under section 703 or 707, and if prior board action is not required regarding the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting is the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under section 707 and if prior board action is required regarding the action to be taken without a meeting, the record date is the close of business on the day the resolution of the board taking such prior action is adopted. Written consent is not effective to take the corporate action referred to in the consent unless, within 60 days of the earliest date on which a consent delivered to the corporation as required by this section was signed, written consents signed by a sufficient number of shareholders to take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporate action are delivered to the corporation.

[2007, c. 289, §7 (AMD) .]

3. **Effect of signed consent.** A consent signed pursuant to the provisions of this section has the effect of a vote taken at a meeting and may be described as such in any document. Unless the articles of incorporation, the bylaws or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent is effective when written consents signed by a sufficient number of shareholders to take the action are delivered to the corporation.

[2007, c. 289, §7 (AMD) .]

4. **Notice to nonvoting shareholders.** If this Act requires that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the action not more than 10 days after:

A. Written consents sufficient to take the action have been delivered to the corporation; or [2007, c. 289, §7 (NEW).]

B. The date that tabulation of consents is completed pursuant to an authorization under subsection 3, as long as that date is later than that in paragraph A. [2007, c. 289, §7 (NEW).]

The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this Act, would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

[2007, c. 289, §7 (AMD) .]

5. **Notice of action to nonconsenting voting shareholders.** If action is taken by less than unanimous written consent of the voting shareholders, the corporation must give its nonconsenting voting shareholders written notice of the action not more than 10 days after:

A. Written consents sufficient to take the action have been delivered to the corporation; or [2007, c. 289, §7 (NEW).]

B. The date that tabulation of consents is completed pursuant to an authorization under subsection 3, as long as that date is later than that in paragraph A. [2007, c. 289, §7 (NEW).]

The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this Act, would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

[2007, c. 289, §7 (NEW) .]

6. **Effect of failure to provide notice.** The notice requirements in subsections 4 and 5 do not delay the effectiveness of actions taken by written consent. A failure to comply with such notice requirements does not invalidate actions taken by written consent. This subsection does not limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice within the required time period.

[2007, c. 289, §7 (NEW) .]

7. **Consent by electronic transmission.**

[2011, c. 274, §18 (RP) .]

8. **Delivery of a written consent.**

[2011, c. 274, §19 (RP) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2007, c. 289, §7 (AMD). 2011, c. 274, §§18, 19 (AMD).

§705. NOTICE OF MEETING

1. **Notification to shareholders.** A corporation shall notify shareholders of the date, time and place of each annual or special shareholders' meeting no fewer than 10 days, or 3 days for close corporations, nor more than 60 days before the meeting date. The notice must include the record date for determining the shareholders entitled to vote at the meeting, if such date is different than the record date for determining shareholders entitled to notice of the meeting. If the board of directors has authorized participation by means of remote communication pursuant to section 709 for any class or series of shareholders, the notice to such class or series of shareholders must describe the means of remote communication to be used. Unless this Act or the corporation's articles of incorporation require otherwise, the corporation is required only to give notice to shareholders entitled to vote at the meeting as of the record date for determining the shareholders entitled to notice of the meeting.

[2011, c. 274, §20 (AMD) .]

2. **Annual meeting; description of purpose not required.** Unless this Act or a corporation's articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

3. **Special meeting; description of purpose required.** Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

4. **Record date.** If not otherwise fixed under section 703 or 707, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

5. **Adjournment to new date, time or place.** Unless a corporation's bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time or place, notice need not be given of the new date, time or place if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 707, however, notice of the adjourned meeting must be given under this section to shareholders entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned date.

[2011, c. 274, §21 (AMD) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2011, c. 274, §§20, 21 (AMD).

§706. WAIVER OF NOTICE

1. **Shareholder may waive notice.** A shareholder may waive any notice required by this Act or a corporation's articles of incorporation or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. **Attendance of meeting.** A shareholder's attendance at a meeting:

A. Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

§707. RECORD DATE

1. **Establishment of record date.** A corporation's bylaws may fix or provide the manner of fixing the record date or dates for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote or to take any other action. If the bylaws do not fix or provide for fixing a record date or dates, the board of directors of the corporation may fix a future date as the record date or dates.

[2011, c. 274, §22 (AMD) .]

2. **Limitation on date.** A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

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

[2011, c. 274, §23 (AMD) .]

4. **Court-ordered meeting.** If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date or dates continue in effect or it may fix a new record date or dates.

[2011, c. 274, §24 (AMD) .]

5. **Determining shareholder entitlements.** The record date for a shareholders' meeting fixed by or in the manner provided in the bylaws or by the board of directors is the record date for determining shareholders entitled both to notice of and to vote at the shareholders' meeting, unless in the case of a record date fixed by the board of directors and to the extent not prohibited by the bylaws, the board, at the time it fixes the record date for shareholders entitled to notice of the meeting, fixes a later record date on or before the date of the meeting to determine the shareholders entitled to vote at the meeting.

[2011, c. 274, §25 (NEW) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2011, c. 274, §§22-25 (AMD).

§708. CONDUCT OF MEETING

1. **Chair presides.** At each meeting of a corporation's shareholders under this chapter, a chair shall preside. The chair must be appointed as provided in the bylaws or, in the absence of such provision, by the board of directors.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. **Order of business.** The chair, unless the corporation's articles of incorporation or bylaws provide otherwise, shall determine the order of business and has the authority to establish rules for the conduct of a meeting held pursuant to this chapter.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

3. **Fairness of rules.** Rules adopted for the meeting and the conduct of a meeting held pursuant to this chapter must be fair to shareholders.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

4. **Announcement when polls close.** The chair of a meeting held pursuant to this chapter shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls are deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes nor any revocations or changes thereto may be accepted.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

§709. REMOTE PARTICIPATION IN ANNUAL AND SPECIAL MEETINGS

1. **Participation by means of remote communication.** Shareholders of any class or series may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes participation for the class or series. Participation by means of remote communication is subject to guidelines and procedures adopted by the board of directors and must be in conformity with subsection 2.

[2011, c. 274, §26 (NEW) .]

2. **Shareholder presence and voting.** Shareholders participating in a shareholders' meeting by means of remote communication are deemed present and may vote at the meeting if the corporation has implemented reasonable measures:

A. To verify that each person participating remotely is a shareholder; and [2011, c. 274, §26 (NEW).]

B. To provide the shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate and to read or hear the proceedings of the meeting, substantially concurrently with the proceedings. [2011, c. 274, §26 (NEW).]

[2011, c. 274, §26 (NEW) .]

SECTION HISTORY
2011, c. 274, §26 (NEW).

Subchapter 2: VOTING

§721. SHAREHOLDERS LISTS FOR MEETING

1. **Lists of shareholders' names.** After fixing a record date for a shareholders' meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. If the board of directors fixes a different record date under section 707, subsection 5 to determine the shareholders entitled to vote at the meeting, a corporation also shall prepare an alphabetical list of the names of all its shareholders who are entitled to vote at the meeting. A list must be classified by voting group, and within each voting group by class or series of shares, and must show the address of and number of shares held by each shareholder. In the case of a close corporation, the requirement of a shareholders list may

be satisfied by a stock transfer book or records, which need not be maintained in alphabetized order and need not contain the addresses of shareholders so long as the address of each shareholder is otherwise maintained in the records of the corporation.

[2011, c. 274, §27 (AMD) .]

2. **Available for inspection.** The shareholders list for notice must be available for inspection by any shareholder, beginning 2 business days after notice of the meeting for which the list was prepared is given, or the next business day in the case of a close corporation that has provided fewer than 10 days' notice of such meeting, and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholders list for voting must be similarly available for inspection promptly after the record date for voting. A shareholder or the shareholder's agent or attorney is entitled on written demand to inspect and, subject to the requirements of section 1602, subsection 4, to copy a list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

[2011, c. 274, §27 (AMD) .]

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

[2011, c. 274, §27 (AMD) .]

4. **Refusal by corporation.** If the corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect a shareholders list before or at the meeting or copy a list as permitted by subsection 2, the Superior Court of the county where a corporation's principal office is located, or, if there is no principal office located in this State, of Kennebec County, on application of the shareholder may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

[2011, c. 274, §27 (AMD) .]

5. **Effect of unavailability of shareholders list.** Refusal or failure to prepare or make available a shareholders list does not affect the validity of action taken at the meeting.

[2011, c. 274, §27 (AMD) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2007, c. 323, Pt. C, §13 (AMD). 2007, c. 323, Pt. G, §4 (AFF). 2011, c. 274, §27 (AMD).

§722. VOTING ENTITLEMENT OF SHARES

1. **Entitlement to vote.** Except as provided in subsections 2 and 4 or unless a corporation's articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote. The articles of incorporation may grant, either absolutely or conditionally, to the holders of bonds, debentures or other obligations of the corporation the power to vote on specified matters, including the election of directors. This power may not be terminated except upon written assent of the holders of 2/3 in the aggregate face amount of such bonds,

debentures or other obligations. When this power has been granted to holders of bonds, debentures or other obligations of a corporation, the term "shareholder," whenever used in this Act, includes holders of such obligations to the extent necessary to give effect to their voting power so granted.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. **Ownership of shares by 2nd corporation.** Absent special circumstances, a share of a corporation is not entitled to vote if it is owned, directly or indirectly, by a 2nd corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the 2nd corporation.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

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

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

4. **Redeemable shares.** Redeemable shares are not entitled to vote after notice of redemption is mailed to the shareholders and a sum sufficient to redeem the shares has been deposited with a bank, trust company or other financial institution under an irrevocable obligation to pay the shareholders the redemption price on surrender of the shares.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

§723. PROXIES

1. **Voting authorized.** A shareholder may vote the shareholder's shares in person or by proxy.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. **Appointment of proxy.** A shareholder or the shareholder's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which the recipient can determine the date of the transmission and that the transmission was authorized by the sender or the sender's agent or attorney-in-fact.

[2011, c. 274, §28 (AMD) .]

3. **Appointment of proxy effective.** An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election appointed pursuant to section 731 or the officer or agent of the corporation authorized to count votes. An appointment is valid for the term provided in the appointment form ; if no term is provided, the appointment is valid for 11 months unless the appointment is irrevocable under subsection 4.

[2015, c. 259, §7 (AMD) .]

4. **Appointment of proxy revocable.** An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

A. A pledgee; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. A person who purchased or agreed to purchase the shares; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. A creditor of the corporation who extended the credit under terms requiring the appointment; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

D. An employee of the corporation whose employment contract requires the appointment; or [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

E. A party to a voting agreement created under section 742. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

5. **Death or incapacity of shareholder.** The death or incapacity of a shareholder who appointed a proxy does not affect the right of a corporation to accept the proxy's authority unless notice of the death or incapacity is received by the clerk or an officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

[2003, c. 344, Pt. B, §60 (AMD) .]

6. **Appointment revoked when interest extinguished.** An appointment made irrevocable under subsection 4 is revoked when the interest with which it is coupled is extinguished.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

7. **Transfer of shares subject to irrevocable appointment.** Unless it otherwise provides, an appointment made irrevocable under subsection 4 continues in effect after a transfer of the shares and a transferee takes subject to the appointment, except that a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of the existence of the irrevocable appointment when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

[2015, c. 259, §7 (AMD) .]

8. **Acceptance of proxy's vote.** Subject to section 725 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

9. **Proxies given by holders of corporation's obligations.** The provisions of subsections 1 to 7 apply to proxies given by the holders of a corporation's bonds, debentures or other obligations when a right to vote is conferred upon such holders by the articles of incorporation of a corporation, as permitted by section 722, subsection 1.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §B60 (AMD). 2011, c. 274, §28 (AMD). 2015, c. 259, §7 (AMD).

§724. SHARES HELD BY NOMINEES

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

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. **Procedure for recognition.** The procedure under subsection 1 may set forth:

A. The types of nominees to which it applies; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. The rights or privileges that the corporation recognizes in a beneficial owner; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. The manner in which the procedure is selected by the nominee; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

D. The information that must be provided when the procedure is selected; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

E. The period for which selection of the procedure is effective; and [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

F. Other aspects of the rights and duties created. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[2013, c. 2, §23 (COR) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). RR 2013, c. 2, §23 (COR).

§725. ACCEPTANCE OF VOTES AND OTHER INSTRUMENTS

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

[2015, c. 259, §8 (AMD) .]

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

A. The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. The name signed purports to be that of an administrator, executor, 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, ballot, consent, waiver or proxy appointment; [2015, c. 259, §8 (AMD).]

C. The name 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, ballot, consent, waiver or proxy appointment; [2015, c. 259, §8 (AMD).]

D. The name signed purports to be that of a pledgee, beneficial owner or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, ballot, consent, waiver or proxy appointment; or [2015, c. 259, §8 (AMD).]

E. Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[2015, c. 259, §8 (AMD) .]

3. **Rejection authorized.** A corporation is entitled to reject a vote, ballot, consent, waiver or proxy appointment if the person authorized to count votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

[2015, c. 259, §8 (AMD) .]

4. **Not liable for damages.** A corporation and the person authorized to count votes, including an inspector of election under section 731, that accept or reject a vote, ballot, consent, waiver or proxy appointment in good faith and in accordance with the standards of this section or section 723, subsection 2 are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

[2015, c. 259, §8 (AMD) .]

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

[2015, c. 259, §8 (AMD) .]

6. **Power of inspector.** If an inspector of election has been appointed under section 731, the inspector of election also has the authority to request information and make determinations under subsections 1, 2 and 3. A determination made by the inspector of election under those subsections is controlling.

[2015, c. 259, §8 (NEW) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2015, c. 259, §8 (AMD).

§726. SHARES HELD BY MINOR

If the record owner of shares is a minor and the shares are voted under this subchapter by the minor, a guardian or other legal representative of the minor or a natural or adoptive parent of the minor, the minor may not thereafter disaffirm or avoid that vote. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

§727. QUORUM AND VOTING REQUIREMENTS FOR VOTING GROUPS

1. **Quorum.** Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the corporation's articles of incorporation or this Act provides for a greater or lesser quorum, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter. A quorum may not consist of less than 1/3 of the shares of a voting group entitled to vote on a matter.

[2003, c. 344, Pt. B, §61 (AMD) .]

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

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

3. **Voting requirement.** If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action unless the corporation's articles of incorporation or this Act requires a greater number of affirmative votes.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

4. **Altering quorum or voting requirement.** An amendment of a corporation's articles of incorporation adding, changing or deleting a quorum or voting requirement for a voting group greater than specified in subsection 1 or 3 is governed by section 729.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

5. **Election of directors.** The election of directors is governed by section 730.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

6. **Application to mutual insurer.** This section does not apply to any mutual insurer as defined in Title 24-A, section 401.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

7. **Classes or series voting together as a single group.** Whenever a provision of this Act provides for voting of classes or series as separate voting groups, section 1004, subsection 3 applies to that provision.

[2011, c. 274, §29 (NEW) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §B61 (AMD). 2011, c. 274, §29 (AMD).

§728. ACTION BY SINGLE AND MULTIPLE VOTING GROUPS

1. **Voting by single voting group.** If a corporation's articles of incorporation or this Act provides for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in section 727.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. **Voting by multiple voting groups.** If a corporation's articles of incorporation or this Act provides for voting by 2 or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section 727. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

§729. GREATER QUORUM OR VOTING REQUIREMENTS

1. **Greater number may be required.** A corporation's articles of incorporation may provide for a greater quorum or voting requirement for shareholders or voting groups of shareholders than is provided for by this Act.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. **Amendment of articles of incorporation.** An amendment to a corporation's articles of incorporation that adds, changes or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

§730. VOTING FOR DIRECTORS; CUMULATIVE VOTING

1. **Election by plurality.** Unless otherwise provided in a corporation's articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. **No right to cumulate votes.** Shareholders do not have a right to cumulate their votes for directors unless a corporation's articles of incorporation so provide.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

3. **Cumulate votes; method.** A statement included in a corporation's articles of incorporation thatall or a designated voting group of shareholders "are entitled to cumulate their votes for directors," or containing words of similar import, means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among 2 or more candidates.

[2007, c. 289, §8 (AMD) .]

4. **Requirements.** Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

A. The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. A shareholder who has the right to cumulate votes gives notice to the corporation not less than 48 hours before the time set for the meeting of the shareholder's intent to cumulate that shareholder's votes during the meeting, and if one shareholder gives this notice all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2007, c. 289, §8 (AMD).

§731. INSPECTORS OF ELECTION

1. **Appointment of inspector.** A public corporation shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders in connection with determining voting results. Each inspector shall certify in writing that the inspector will faithfully execute the duties of inspector with strict impartiality and according to the best of the inspector's ability. An inspector may be an officer or employee of the corporation. The inspector may appoint or retain other persons to assist in the performance of the duties of inspector under subsection 2 and may rely on information provided by such persons and other persons, including those appointed to count votes, unless the inspector believes reliance is unwarranted.

[2015, c. 259, §9 (AMD) .]

2. **Duties of inspector.** An inspector shall:

A. Ascertain the number of shares outstanding and the voting power of each; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. Determine the shares represented at a meeting; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. Determine the validity of proxy appointments and ballots; [2015, c. 259, §9 (AMD).]

D. Count the votes; and [2015, c. 259, §9 (AMD).]

E. [2015, c. 259, §9 (RP).]

F. Make a written report of the results. [2015, c. 259, §9 (NEW).]

[2015, c. 259, §9 (AMD) .]

3. **Clerk; officer; employee.**

[2015, c. 259, §9 (RP) .]

4. **Examinations by inspectors.** In performing their duties, the inspectors may examine:

A. The proxy appointment forms and any other information provided in accordance with section 723, subsection 2; [2015, c. 259, §9 (NEW).]

B. Any envelope or related writing submitted with those appointment forms; [2015, c. 259, §9 (NEW).]

C. Any ballots; [2015, c. 259, §9 (NEW).]

D. Any evidence or other information specified in section 725; and [2015, c. 259, §9 (NEW).]

E. The relevant books and records of the corporation relating to its shareholders and their entitlement to vote, including any securities position list provided by a depository clearing agency. [2015, c. 259, §9 (NEW).]

[2015, c. 259, §9 (NEW) .]

5. **Scope of inspectors' powers.** In addition to information otherwise provided under this section, the inspectors may consider information that they believe is relevant and reliable for the purpose of performing any of the duties assigned to them pursuant to subsection 2, including for the purposes of evaluating inconsistent, incomplete or erroneous information and reconciling information submitted on behalf of banks, brokers, their nominees or similar persons that indicates more votes being cast than a proxy is authorized by the record shareholder to cast or more votes being cast than the record shareholder is entitled to cast. If the inspectors consider other information allowed by this subsection, they shall, in their report under subsection 2, specify the information considered by them, including the purpose or purposes for which the information was considered, the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is relevant and reliable.

[2015, c. 259, §9 (NEW) .]

6. **Judicial review.** Determinations of law by the inspectors of election are subject to de novo review by a court in a proceeding under section 732 or other judicial proceeding.

[2015, c. 259, §9 (NEW) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §B62 (AMD). 2007, c. 289, §9 (AMD). 2015, c. 259, §9 (AMD).

§732. JUDICIAL DETERMINATION OF CORPORATE OFFICES AND REVIEW OF ELECTIONS AND SHAREHOLDER VOTES

1. **Judicial determinations authorized.** Upon application of or in a proceeding commenced by a person specified in subsection 2, the Superior Court of the county where a corporation's principal office or, if none in this State, its registered office, is located may determine:

A. The validity of the election, appointment, removal or resignation of the director or officer of the corporation; [2015, c. 259, §10 (NEW).]

B. The right of an individual to hold the office of director or officer of the corporation; [2015, c. 259, §10 (NEW).]

C. The result or validity of an election or vote by the shareholders of the corporation; [2015, c. 259, §10 (NEW).]

D. The right of a director to membership on a committee of the board of directors; and [2015, c. 259, §10 (NEW).]

E. The right of a person to nominate or an individual to be nominated as a candidate for election or appointment as a director of the corporation, and any right under a bylaw adopted pursuant to section 206, subsection 2 or any comparable right under any provision of the articles of incorporation, contract or applicable law. [2015, c. 259, §10 (NEW).]

[2015, c. 259, §10 (NEW) .]

2. **Persons entitled to commence proceedings.** An application or proceeding pursuant to subsection 1 may be filed or commenced by any of the following persons:

A. The corporation; [2015, c. 259, §10 (NEW).]

B. A record shareholder or beneficial shareholder of the corporation; [2015, c. 259, §10 (NEW).]

C. A director of the corporation, an individual claiming the office of the director or a director whose membership on a committee of the board of directors is contested, in each case who is seeking a determination of that individual's right to such office or membership; [2015, c. 259, §10 (NEW).]

D. An officer of the corporation or an individual claiming to be an officer of the corporation who is seeking a determination of the individual's right to such office; and [2015, c. 259, §10 (NEW).]

E. A person claiming a right covered by subsection 1, paragraph E and who is seeking a determination of such right. [2015, c. 259, §10 (NEW).]

[2015, c. 259, §10 (NEW) .]

3. **Named defendants.** In connection with any application or proceeding under subsection 1, the following must be named as defendants, unless that person made the application or commenced the proceeding:

A. The corporation; [2015, c. 259, §10 (NEW).]

B. An individual whose right to office or membership on a committee of the board of directors is contested; [2015, c. 259, §10 (NEW).]

C. An individual claiming the office or membership at issue; and [2015, c. 259, §10 (NEW).]

D. A person claiming a right covered by subsection 1, paragraph E that is at issue. [2015, c. 259, §10 (NEW).]

[2015, c. 259, §10 (NEW) .]

4. **Service of process.** In connection with any application or proceeding under subsection 1, service of process may be made upon each of the persons specified in subsection 3 by either:

A. Serving on the corporation process in any manner provided by statute of this State or by rule of the applicable court for service on the corporation; or [2015, c. 259, §10 (NEW).]

B. Service of process on such person in any manner provided by statute of this State or by rule of applicable court. [2015, c. 259, §10 (NEW).]

[2015, c. 259, §10 (NEW) .]

5. **Notice of service of process.** When service of process is made upon a person other than the corporation by service upon the corporation pursuant to subsection 4, paragraph A, the plaintiff and the corporation or its registered agent shall promptly provide written notice of such service, together with copies of all process and the application or complaint, to such person at the person's last known residence or business address, or as permitted by statute of this State or by rule of the applicable court.

[2015, c. 259, §10 (NEW) .]

6. **Expedited proceedings; remedies.** In connection with any application or proceeding under subsection 1, the court shall dispose of the application or proceeding on an expedited basis and also may:

A. Order such additional or further notice as the court considers proper under the circumstances; [2015, c. 259, §10 (NEW).]

B. Order that additional persons be joined as parties to the proceeding if the court determines that such joinder is necessary for a just adjudication of matters before the court; [2015, c. 259, §10 (NEW).]

C. Order an election or meeting to be held in accordance with the provisions of section 703, subsection 2 or otherwise; [2015, c. 259, §10 (NEW).]

D. Appoint a master to conduct an election or meeting; [2015, c. 259, §10 (NEW).]

E. Enter temporary, preliminary or permanent injunctive relief; [2015, c. 259, §10 (NEW).]

F. Resolve solely for the purpose of this proceeding any legal or factual issues necessary for the resolution of any of the matter specified in subsection 1, including the right and power of persons claiming to own shares to vote at any meeting of the shareholders; and [2015, c. 259, §10 (NEW).]

G. Order such relief as the court determines is equitable, just and proper. [2015, c. 259, §10 (NEW).]

[2015, c. 259, §10 (NEW) .]

7. **Shareholders as parties.** It is not necessary to make a shareholder a party to a proceeding or application pursuant to this section unless the shareholder is a required defendant under subsection 3, paragraph D, relief is sought against the shareholder individually or the court orders joinder pursuant to subsection 6, paragraph B.

[2015, c. 259, §10 (NEW) .]

8. **Jurisdiction or powers not exclusive.** Nothing in this section limits, restricts or abolishes the subject matter jurisdiction or powers of the court as existed prior to the enactment of this section and an application or proceeding available with respect to the matters specified in subsection 1.

[2015, c. 259, §10 (NEW) .]

9. **Right to jury trial.** In any proceeding commenced under this section there is no right to a jury trial.

[2015, c. 259, §10 (NEW) .]

SECTION HISTORY
2015, c. 259, §10 (NEW).

Subchapter 3: VOTING TRUSTS AND AGREEMENTS

§741. VOTING TRUSTS

1. **Creation of voting trust.** One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

[2015, c. 259, §11 (AMD) .]

2. **Effective date of voting trust.** A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name.

[2015, c. 259, §11 (AMD) .]

3. **Extension authorized.**

[2015, c. 259, §11 (RP) .]

4. **Limits.** Limits, if any, on duration of a voting trust are as set forth in the voting trust. A voting trust that became effective when this section provided a 21-year limit on its duration under former subsection 3 remains governed by the provisions of this section then in effect, unless the voting trust is amended to provide otherwise by unanimous agreement of the parties to the voting trust.

[2015, c. 259, §11 (NEW) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2015, c. 259, §11 (AMD).

§742. VOTING AGREEMENTS

1. **Creation of voting agreement.** Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of section 741.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. **Enforceable.** A voting agreement created under this section is specifically enforceable.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

3. **Rescission.** Any purchaser of shares for value that are subject to a voting agreement who, at the time of purchase, did not have knowledge of the existence of the agreement is entitled to rescission of the purchase against the transferor of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of 180 days after discovery of the existence of the agreement or 2 years after the time of purchase of the shares.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

§743. SHAREHOLDER AGREEMENTS

1. **Shareholder agreement effective despite inconsistency with Act.** An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this Act in that it:

A. Eliminates the board of directors or restricts the discretion or powers of the board of directors; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in section 651; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. Establishes who are directors or officers of the corporation or their terms of office or manner of selection or removal; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

D. Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

E. Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer or employee of the corporation or among any of them; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

F. Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders; [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

G. Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

H. Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them, and is not contrary to public policy. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. **Requirements for shareholder agreement.** An agreement authorized by this section must comply with each of the following paragraphs.

A. The agreement must be set forth:

(1) In the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

(2) In a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. The agreement must be subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise or unless the amendment is governed by subsection 8. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. [2003, c. 344, Pt. B, §63 (RP).]

An agreement authorized by this section is valid for an unlimited term unless the agreement provides otherwise.

[2003, c. 344, Pt. B, §63 (AMD) .]

3. **Notation of existence of agreement required.** The existence of an agreement authorized by this section must be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by section 627, subsection 2. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement does not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement is entitled to rescission of the purchase. A purchaser is deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a

certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of 180 days after discovery of the existence of the agreement or 2 years after the time of purchase of the shares.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

4. **Agreement ceases to be effective.** An agreement authorized by this section ceases to be effective when the corporation becomes a public corporation. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

[2007, c. 289, §10 (AMD) .]

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

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

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

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

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

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

8. **Articles of incorporation provide for elimination of board of directors.** If the articles of incorporation of a corporation provide for the elimination of the board of directors, the provisions of this subsection apply, except to the extent an agreement among the shareholders of a corporation that complies with this section expressly provides otherwise.

A. The shareholders of the corporation are deemed directors for purposes of applying provisions of this Act when the context requires and have the powers of directors under this Act. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. The shareholders of the corporation, when taking actions required of directors under this Act, have liability to the extent otherwise imposed by law on directors under this Act. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. When acting as directors, shareholders approve a corporate action by a vote of their shares and not by a per capita vote. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

D. An amendment to delete a provision that eliminates a board of directors from the articles of incorporation must be adopted by a majority of the votes entitled to be cast by each voting group entitled to vote as a separate voting group on that amendment. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

E. The provisions of subsection 3 do not apply to certificates of shareholder-managed corporations issued prior to the effective date of this Act but apply to all certificates or information statements issued by shareholder-managed corporations issued after the effective date of this Act. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

F. The principles applicable to shareholder-managed corporations referred to in this subsection may be varied by or incorporated in an agreement among the shareholders, as long as that agreement complies with and is governed by the provisions of subsections 1 to 7. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §B63 (AMD). 2007, c. 289, §10 (AMD).

Subchapter 4: DERIVATIVE PROCEEDINGS

§751. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

1. **Derivative proceeding.** "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in section 758, in the right of a foreign corporation.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. **Shareholder.** "Shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

§752. STANDING

A shareholder may not commence or maintain a derivative proceeding unless the shareholder: [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

1. **Shareholder at time of act or omission.** Was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. **Represents interests.** Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

§753. DEMAND

A shareholder may not commence a derivative proceeding until: [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

1. **Written demand.** A written demand has been made upon the corporation to take suitable action; and

[2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

2. **Expiration of 90 days.** Ninety days have expired from the date delivery of the demand was made, unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

[2011, c. 274, §30 (AMD) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2011, c. 274, §30 (AMD).

§754. STAY OF PROCEEDINGS

If the corporation commences an inquiry into the allegations made in the complaint or demand under section 753, the court may stay any derivative proceeding for such period as the court considers appropriate. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

§755. DISMISSAL

1. **Dismissal of proceeding.** The court, on motion by the corporation, shall dismiss a derivative proceeding if one of the groups specified in paragraphs A to C determines, in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation:

A. A panel of one or more individuals appointed by the court on motion of the corporation. The plaintiff has the burden of proving that the panel or the determination did not meet the standards required in this subsection; [2007, c. 289, §11 (AMD).]

B. A majority of qualified directors present and voting at a meeting of the board of directors if the qualified directors constitute a quorum; or [2007, c. 289, §11 (AMD).]

C. A majority of a committee consisting of 2 or more qualified directors appointed by majority vote of qualified directors present and voting at a meeting of the board of directors, whether or not such qualified directors constituted a quorum. [2007, c. 289, §11 (AMD).]

[2007, c. 289, §11 (AMD) .]

2. **Independence of director.**

[2007, c. 289, §11 (RP) .]

3. **Complaint must allege with particularity.** If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint must allege with particularity facts establishing either that a majority of the board of directors did not consist of qualified directors at the time the determination was made or that the requirements of subsection 1 have not been met.

[2007, c. 289, §11 (AMD) .]

4. **Burden of proof.** If a majority of the board of directors consisted of qualified directors at the time the determination was made, the plaintiff has the burden of proving that the requirements of subsection 1 have not been met; otherwise, the corporation has the burden of proving that the requirements of subsection 1 have been met.

[2007, c. 289, §11 (AMD) .]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2007, c. 289, §11 (AMD).

§756. DISCONTINUANCE OR SETTLEMENT

A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

§757. PAYMENT OF EXPENSES

On termination of the derivative proceeding the court may: [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

1. **Corporation to pay plaintiff's expenses.** Order the corporation to pay the plaintiff's expenses incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

[2007, c. 289, §12 (AMD) .]

2. **Plaintiff to pay defendant's expenses.** Order the plaintiff to pay any defendant's expenses incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

[2007, c. 289, §12 (AMD) .]

3. **Improper purpose.** Order a party to pay an opposing party's expenses incurred because of the filing of a pleading, motion or other paper, if it finds after reasonable inquiry that the pleading, motion or other paper was not well grounded in fact or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law and was interposed for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

[2007, c. 289, §12 (AMD) .]

SECTION HISTORY

2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF). 2007, c. 289, §12 (AMD).

§758. APPLICABILITY TO FOREIGN CORPORATIONS

In any derivative proceeding in the right of a foreign corporation, the matters covered by this subchapter, except for sections 754, 756 and 757, are governed by the laws of the jurisdiction of incorporation of the foreign corporation. [2001, c. 640, Pt. A, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

SECTION HISTORY
2001, c. 640, §A2 (NEW). 2001, c. 640, §B7 (AFF).

Subchapter 5: PROCEEDINGS TO APPOINT CUSTODIAN OR RECEIVER

§781. SHAREHOLDER ACTION TO APPOINT CUSTODIAN OR RECEIVER

1. **Court may appoint.** The Superior Court may appoint one or more persons to be custodians or, if the corporation is insolvent, to be receivers of and for a corporation in a proceeding by a shareholder when it is established that:

A. The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock and irreparable injury to the corporation is threatened or being suffered; or [2011, c. 274, §31 (NEW).]

B. The directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered. [2011, c. 274, §31 (NEW).]

[2011, c. 274, §31 (NEW) .]

2. **Remedies; procedures.** The Superior Court:

A. May issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets, wherever located, and carry on the business of the corporation until a full hearing is held; [2011, c. 274, §31 (NEW).]

B. Shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and [2011, c. 274, §31 (NEW).]

C. Has jurisdiction over the corporation and all of its property, wherever located. [2011, c. 274, §31 (NEW).]

[2011, c. 274, §31 (NEW) .]

3. **Appointments; bonds.** The Superior Court may appoint an individual, a domestic corporation or a foreign corporation authorized to transact business in this State as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

[2011, c. 274, §31 (NEW) .]

4. **Powers and duties.** The Superior Court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. The powers include but are not limited to the following.

A. A custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation. [2011, c. 274, §31 (NEW).]

B. A receiver:

(1) May dispose of all or any part of the assets of the corporation, wherever located, at a public or private sale, if authorized by the court; and

(2) May sue and defend in the receiver's own name as receiver in all courts of this State. [2011, c. 274, §31 (NEW).]

[2011, c. 274, §31 (NEW) .]

5. **Redesignations.** The Superior Court during a custodianship may redesignate the custodian as a receiver and during a receivership may redesignate the receiver as a custodian, if doing so is in the best interests of the corporation.

[2011, c. 274, §31 (NEW) .]

6. **Compensation and expenses.** The Superior Court from time to time during the custodianship or receivership may order compensation paid and expense disbursements or reimbursements made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

[2011, c. 274, §31 (NEW) .]

SECTION HISTORY
2011, c. 274, §31 (NEW).

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