

West's Code of Georgia Annotated [Currentness](#)

Title 14. Corporations, Partnerships, and Associations

☞ [Chapter 3. Nonprofit Corporations](#)

--Code Revision Commission Note on Comments--

The comments appearing in this chapter were prepared under the supervision of the Georgia Nonprofit Corporation Code Revision Committee, an ad hoc committee of the Fiduciary and Corporate and Banking Law Sections of the State Bar of Georgia. These comments are included in the Official Code of Georgia Annotated at the request of the Committee. Neither the General Assembly of Georgia nor the Code Revision Commission of the State of Georgia participated in the drafting of these comments or reviewed the comments for content. The comments should not be considered to constitute a statement of legislative intention by the General Assembly of Georgia, nor do they have the force of statutory law.

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→ **§ 14-3-101. Short title**

This chapter shall be known and may be cited as the “Georgia Nonprofit Corporation Code.”

CREDIT(S)

Laws 1991, p. 465, § 1.

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→ **§ 14-3-102. Reservation of power to amend or repeal**

The General Assembly has power to amend or repeal all or part of this chapter at any time and all domestic and foreign corporations subject to this chapter are governed by the amendment or repeal.

CREDIT(S)

Laws 1991, p. 465, § 1.

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→ **§ 14-3-120. Filing requirements**

- (a) A document must satisfy the requirements of this Code section and of any other Code section that adds to or varies these requirements to be entitled to filing by the Secretary of State.
- (b) This chapter must require or permit filing the document in the office of the Secretary of State.
- (c) The document must contain the information required by this chapter. It may contain other information as well.
- (d) The document must be typewritten or printed.
- (e) The document must be in the English language. However, a corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.
- (f) The document must be executed:
- (1) By the chairperson of the board of directors of a domestic or foreign corporation, its president, or by another of its officers;
  - (2) If directors have not been selected or the corporation has not been formed, by an incorporator; or
  - (3) If the corporation is in the hands of a receiver, trustee, or other court appointed fiduciary, by that fiduciary;
- provided, however, the person executing the document may do so as an attorney in fact. Powers of attorney relating to the execution of the document do not need to be shown to or filed with the Secretary of State.
- (g) The person executing a document shall sign it and state beneath or opposite the signature his or her name and the capacity in which he or she signs; provided, however, that if the document is electronically transmitted, the

electronic version of such person's name may be used in lieu of a signature. The document may, but need not, contain:

- (1) The corporate seal;
  - (2) An attestation by the secretary or an assistant secretary; or
  - (3) An acknowledgment, verification, or proof.
- (h) The document must be delivered to the office of the Secretary of State for filing and must be accompanied by one exact or conformed copy (except as provided in [Code Sections 14-3-503](#) and [14-3-1509](#)), the correct filing fee, any certificate required by this chapter, and any penalty required by this chapter or other law.
- (i) Notwithstanding the provisions of this chapter, the Secretary of State may authorize the filing of documents by electronic transmission, following the provisions of Chapter 12 of Title 10, the “Uniform Electronic Transactions Act,” and the Secretary of State shall be authorized to promulgate such rules and regulations as are necessary to implement electronic filing procedures.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1999, p. 405, § 14; [Laws 2009, Act 141, § 2, eff. July 1, 2009](#).

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→ **§ 14-3-121. Forms**

The Secretary of State may prescribe and furnish on request, forms for:

- (1) An application for a certificate of existence;
- (2) A foreign corporation's application for a certificate of authority to conduct affairs in this state;
- (3) A foreign corporation's application for a certificate of withdrawal;
- (4) The annual registration; and
- (5) Such other forms not in conflict with this chapter as may be prescribed by the Secretary of State.

CREDIT(S)

Laws 1991, p. 465, § 1.

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→ **§ 14-3-122. Filing fees**

The Secretary of State shall collect the following fees when the documents described in this Code section are delivered for filing:

<u>Document</u>	<u>Fee</u>
(1) Articles of incorporation	\$100.00
(2) Application for certificate of authority	225.00
(3) Annual registration	30.00
(4) Penalty for late filing of annual registration	25.00
(5) Agent's statement of resignation	No fee
(6) Certificate of judicial dissolution	No fee
(7) Articles of dissolution or intent to dissolve	No fee
(8) Application of withdrawal	No fee
(9) Application for reservation of a corporate name	25.00
(10) Statement of change of address of registered agent ... \$5.00 per corporation but not less than )	20.00
(11) Application for reinstatement )	100.00
(12) Any other document required or permitted to be filed by this chapter )	20.00

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1997, p. 1165, § 12; Laws 1999, p. 405, § 15; [Laws 2003, Act 385, § 3, eff. July 1, 2003](#); [Laws 2008, Act 452, § 8, eff. July 1, 2008](#).

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→ **§ 14-3-123. Effective time and date of filing**

(a) Except as provided in subsection (b) of this Code section and subsection (c) of [Code Section 14-3-124](#), a document is effective:

(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's endorsement on the original document; or

(2) At any later time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date filed.

(c) If a document is determined by the Secretary of State to be incomplete and inappropriate for filing, the Secretary of State may return the document to the person or corporation filing it, together with a brief written explanation of the reason for the refusal to file, in accordance with subsection (c) of [Code Section 14-3-125](#) and, if the applicant returns the document with corrections in accordance with the rules and regulations of the Secretary of State, the filing date of the document will be the filing date that would have been applied had the original document not been deficient.

CREDIT(S)

Laws 1991, p. 465, § 1.

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→ **§ 14-3-124. Correcting filed document**

(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document:

(1) Contains an incorrect statement; or

(2) Was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected:

(1) By preparing articles of correction that:

(A) Describe the document (including its filing date);

(B) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and

(C) Correct the incorrect statement or defective execution; and

(2) By delivering the articles of correction to the Secretary of State for filing.

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

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 2002, p. 989, § 8.

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→ **§ 14-3-125. Filing duty of Secretary of State**

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of [Code Section 14-3-120](#), the Secretary of State shall file it.

(b) The Secretary of State files a document by stamping or otherwise endorsing his or her official title and the date and time of receipt on both the original and the document copy. After filing a document, except as provided in [Code Sections 14-3-503](#) and [14-3-1510](#), the Secretary of State shall deliver the document copy to the domestic or foreign corporation or its representative.

(c) If the Secretary of State refuses to file a document, he or she shall return it to the domestic or foreign corporation or its representative within ten days after the document was delivered, together with a brief, written explanation of the reason for his or her refusal.

(d) The Secretary of State's duty to file documents under this Code section is ministerial. Filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or in part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, §§ 66\(1\), 68\(1\), eff. July 1, 2004](#).

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→ **§ 14-3-126. Appeal from Secretary of State's refusal to file document**

(a) If the Secretary of State refuses to file a document delivered to his or her office for filing, the domestic or foreign corporation may appeal the refusal within 30 days after the return of the document to the superior court. The appeal is commenced by petitioning the court to compel filing of the document and by attaching to the petition the document and the Secretary of State's explanation of his or her refusal to file.

(b) The matter shall promptly be tried de novo by the court without a jury. The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 68\(2\)](#), eff. July 1, 2004.

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→ **§ 14-3-127. Evidentiary effect of copy of filed document or electronic transmission**

A certificate attached to a copy of a document or electronic transmission filed by the Secretary of State, bearing his or her signature, which may be in facsimile, and the printed or embossed seal of this state, or its electronic equivalent, is prima-facie evidence that the original document has been filed with the Secretary of State.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1999, p. 405, § 16.

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→ **§ 14-3-128. Certificate of existence**

(a) Any person may apply to the Secretary of State to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(b) A certificate of existence or authorization sets forth:

(1) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(2) That the domestic corporation is duly incorporated under the law of this state and the date of its incorporation, or that the foreign corporation is authorized to transact business in this state;

(3) That its most recent annual registration required by [Code Section 14-3-1622](#) has been delivered to the Secretary of State; and

(4) That articles of dissolution have not been filed.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as prima-facie evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

CREDIT(S)

Laws 1991, p. 465, § 1.

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➔ **§ 14-3-129. Penalty for signing false document**

A person who signs a document he or she knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$500.00.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 66\(2\), eff. July 1, 2004.](#)

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➔ **§ 14-3-130. Powers**

The Secretary of State has the power reasonably necessary to perform the duties required of him or her by this chapter.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 67\(1\), eff. July 1, 2004.](#)

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▣ [Part 4. Definitions; Notice](#)

→ **§ 14-3-140. Definitions**

As used in this chapter, the term:

(1) “Articles of incorporation” or “articles” includes amended and restated articles of incorporation and articles of merger.

(2) “Board of directors” or “board” means the person or persons vested with the authority to manage the affairs of the corporation, irrespective of the name by which such group is designated, but shall not include any person solely by virtue of powers delegated to him or her by [Code Section 14-3-801](#).

(3) “Business corporation” means a corporation for profit, incorporated under the provisions of Chapter 2 of this title.

(4) “Bylaws” means the code of rules other than the articles adopted pursuant to this chapter for the regulation or management of the affairs of the corporation, irrespective of the name or names by which such rules are designated.

(5) “Class” refers to a group of memberships which have the same rights with respect to voting, dissolution, redemption, and transfer. For the purpose of this Code section, rights shall be considered the same if they are determined by a formula applied uniformly.

(6) “Corporation” or “domestic corporation” means a corporation, other than a foreign corporation, incorporated under or subject to the provisions of this chapter.

(7) “Delegate” means a person elected or appointed to vote in a representative assembly for the election of a director or on other matters.

(8) “Deliver” includes delivery by hand, mail, private carrier, and electronic transmission.

(9) “Distribution” means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers. Payment of indemnification or reasonable compensation, fees, or expenses incurred in the performance of duties on behalf of the corporation is not a distribution.

(10) “Effective date of notice” is defined in [Code Section 14-3-141](#).

(11) “Electronic network” means any medium for sending, receiving, and viewing electronic transmissions among persons.

(12) “Electronic transmission” or “electronically transmitted” means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved, and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process. Electronic transmissions include, but are not limited to, telegraphs, telegrams, cablegrams, teletypes, e-mail, and facsimile transmissions.

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

(14) “Entity” includes corporation and foreign corporation; business corporation and foreign business corporation; profit and nonprofit unincorporated association; business trust, estate, general partnership, limited partnership, trust, two or more persons having a joint or common economic interest; limited liability company and foreign limited liability company; limited liability partnership and foreign limited liability partnership; state, United States, and foreign government; and regional commission solely for the purpose of implementing subsection (f) of [Code Section 50-8-35](#).

(15) “Foreign business corporation” means a corporation for profit incorporated under a law other than the law of this state.

(16) “Foreign corporation” means a corporation incorporated under a law other than the law of this state which would be a nonprofit corporation if incorporated under, or subject to, this chapter.

(17) “Governmental subdivision” includes an authority, county, district, and municipality or any other political subdivision.

(18) “Includes” denotes a partial definition.

(19) “Individual” includes the estate of an incompetent or deceased individual.

(20) “Mail” includes the United States mail.

(21) “Means” denotes an exhaustive definition.

(22) “Member” means without regard to the name by which a person is designated in the articles or bylaws any person who is entitled to vote for the election of a director or directors pursuant to a provision of the corporation's articles or bylaws that expressly provides for or contemplates the existence of members. A person is not a member by virtue of any of the following:

(A) Any rights such person has as a delegate;

(B) Any rights such person has to designate or confirm a director or directors; or

(C) Any rights such person has as a director.

(23) “Notice” is defined in [Code Section 14-3-141](#).

(24) “Person” includes an individual and an entity.

(25) “Principal office” means the office in or out of this state so designated in the annual registration where the principal executive offices of a domestic or foreign corporation are located.

(26) “Proceeding” includes civil suit and criminal, administrative, and investigatory action.

(27) “Record date” means the date established under Article 6 or 7 of this chapter on which a corporation determines the identity of its members for purposes of this chapter. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(28) “Secretary” means the corporate officer to whom the board of directors has delegated responsibility under subsection (b) of [Code Section 14-3-840](#) for custody of the minutes of the meetings of the board of directors and of any members and for authenticating records of the corporation.

(29) “Signature” or “sign” includes any manual, facsimile, conformed, or electronic signature.

(30) “State,” when referring to a part of the United States, includes a state, commonwealth, the District of Columbia (and their agencies and governmental subdivisions) and a territory and insular possession (and their agencies and governmental subdivisions) of the United States.

(31) “Superior court” means the superior court of the county in which the corporation's registered office is located; or, if the corporation has no registered office, the county in which the corporation's principal office is

located; or, if the corporation has neither a registered office nor a principal office, then the Superior Court of Fulton County.

(32) “United States” includes district, authority, bureau, commission, department, and any other agency of the United States.

(33) “Voting power” means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote which is contingent upon the happening of a condition or event that has not occurred at the time. Where a class is entitled to vote as a class for directors, the determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1992, p. 2108, § 2; Laws 1997, p. 1165, § 12.1; Laws 1999, p. 405, § 17; [Laws 2004, Act 533, § 22, eff. July 1, 2004](#); [Laws 2005, Act 19, § 14, eff. April 7, 2005](#); [Laws 2008, Act 436, § 14, eff. July 1, 2009](#).

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▢ [Part 4. Definitions; Notice](#)

→ **§ 14-3-141. Notice**

(a) Notice under this chapter shall be in writing or by electronic transmission unless oral notice is reasonable under the circumstances.

(b) Notice may be communicated in person; by telephone, electronic transmission, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published or by radio, television, or other form of public broadcast communication. Unless otherwise provided in the articles of incorporation, bylaws, or this chapter, notice by electronic transmission shall be deemed to be notice in writing for purposes of this chapter.

(c) Written notice by a domestic or foreign corporation to its members, if in a comprehensible form, is effective when mailed, if mailed with first-class postage prepaid and correctly addressed to the member's address shown in the corporation's current record of members. If the corporation has more than 500 members of record entitled to vote at a meeting, it may utilize a class of mail other than first class if the notice of the meeting is mailed, with adequate postage prepaid, not less than 30 days before the date of the meeting.

(d) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual registration or, in the case of a foreign corporation that has not yet delivered an annual registration, in its application for a certificate of authority.

(e) Except as provided in subsections (c) and (h) of this Code section or in the articles of incorporation or bylaws, written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received or when delivered, properly addressed, to the addressee's last known principal place of business or residence;

(2) Five days after its deposit in the mail, as evidenced by the postmark, if mailed with first-class postage prepaid and correctly addressed; or

(3) On the date shown on the return receipt, if sent by registered or certified mail or statutory overnight delivery, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated if communicated in a comprehensible manner.

(g) In calculating time periods for notice under this chapter, when a period of time measured in days, weeks, months, years, or other measurement of time is prescribed for the exercise of any privilege or the discharge of any duty, the first day shall not be counted but the last day shall be counted.

(h)(1) Without limiting the manner by which notice otherwise may be given effectively to members, any notice to members given by the corporation under any provision of this chapter, the articles of incorporation, or the bylaws shall be effective if given by a form of electronic transmission consented to by the member to whom the notice is given. Any such consent shall be revocable by the member by written notice to the corporation. Any such consent shall be deemed revoked if:

(A) The corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent; and

(B) Such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent or other person responsible for the giving of notice; provided, however, that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(2) Notice given pursuant to this subsection shall be deemed effective:

(A) If by facsimile telecommunication, when transmitted to a number at which the member has consented to receive notice;

(B) If by e-mail, when transmitted to an e-mail address at which the member has consented to receive notice;

(C) If by a posting on an electronic network together with separate notice to the member of such specific posting, upon the later of (i) such posting or (ii) the giving of such separate notice; and

(D) If by any other form of electronic transmission, when transmitted to the member.

(i) An affidavit, certificate, or other written confirmation of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given under this Code section shall, in the absence of fraud, be prima-facie evidence of the facts stated therein.

(j) The corporation may be obligated to accept from a member consents, requests, demands, or notices given and delivered under this chapter to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the books in which proceedings of meetings of members are recorded by electronic transmission only as provided by resolution of the board of directors of the corporation or in the articles of incorporation.

(k) Unless the registered agent of the corporation shall provide written consent to the corporation to the receipt of a member's consent, request, demand, or notice by electronic transmission under this chapter, delivery made to a corporation's registered office shall be made by hand or by certified or registered mail or statutory overnight delivery, return receipt requested.

(l) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this Code section or other provisions of this chapter, those requirements govern.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 2000, p. 1589, § 3; [Laws 2004, Act 533, § 22, eff. July 1, 2004.](#)

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▣ [Part 5. Court-Ordered Meetings](#)

→ **§ 14-3-160. Court-ordered meeting or vote**

(a) If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws, or this chapter, then upon petition of a director, officer, delegate, member, or the Attorney General, the superior court may order that such a meeting be called or that a ballot in writing or by electronic transmission or other form of obtaining the vote of members, delegates, or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances.

(b) The court shall, in an order issued pursuant to this Code section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws, or this chapter, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this Code section the court may determine who the members or directors are.

(c) The order issued pursuant to this Code section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or this chapter.

(d) Whenever practical, any order issued pursuant to this Code section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this Code section; provided, however, that an order under this Code section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale of assets.

(e) Any meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to an order issued under this Code section, and that complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and this chapter.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 23](#), eff. July 1, 2004.

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▣ [Part 6](#). Powers of Attorney General

→ **§ 14-3-170. Powers and duties of attorney general**

(a) The Attorney General may petition the superior court:

(1) To enjoin the proposed unlawful conveyance, transfer, or assignment of assets of a corporation described in paragraph (2) of subsection (a) of [Code Section 14-3-1302](#) in situations in which the transferee knew of its unlawfulness;

(2) To set aside the unlawful conveyance, transfer, or assignment of assets of a corporation described in paragraph (2) of subsection (a) of [Code Section 14-3-1302](#) in situations in which the transferee knew of its unlawfulness;

(3) To dissolve a corporation that:

(A) Obtained its articles of incorporation through fraud; or

(B) Has continued to exceed or abuse the authority conferred upon it by law; or

(4) To compel accounting and restitution or other appropriate relief for violation of [Code Sections 14-3-830, 14-3-842, 14-3-860 through 14-3-864, or 14-3-1301](#).

(b) In connection with any such proceeding or proposed proceeding, the Attorney General shall have the same power to investigate and issue subpoenas as he or she has with respect to investigations authorized under [Code Section 45-15-17](#).

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 66\(3\), eff. July 1, 2004](#).

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▣ [Part 7](#). Religious Corporations Doctrine

→ **§ 14-3-180. Conflict of law with religious doctrine**

If religious doctrine governing the affairs of a corporation is inconsistent with the provisions of this chapter on the same subject, the religious doctrine shall control to the extent required by the Constitution of the United States or the Constitution of this state or both.

CREDIT(S)

Laws 1991, p. 465, § 1.

Current through the 2009 Regular Session.

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▢ [Article 2. Incorporation \(Refs & Annos\)](#)

→ **§ 14-3-201. Incorporators**

One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing.

CREDIT(S)

Laws 1991, p. 465, § 1.

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▣ [Article 2. Incorporation \(Refs & Annos\)](#)

➔ **§ 14-3-202. Articles of incorporation**

(a) The articles of incorporation must set forth:

- (1) A corporate name for the corporation that satisfies the requirements of [Code Section 14-3-401](#);
- (2) The street address and county of the corporation's initial registered office and the name of its initial registered agent at that office;
- (3) The name and address of each incorporator;
- (4) Whether or not the corporation will have members;
- (5) The mailing address of the initial principal office of the corporation, if different from the initial registered office; and
- (6) A statement that the corporation is organized pursuant to the Georgia Nonprofit Corporation Code.

(b) The articles of incorporation may set forth:

- (1) The purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;
- (2) The names and addresses of the individuals who are to serve as the initial directors;
- (3) Provisions not inconsistent with law regarding:
  - (A) Managing and regulating the affairs of the corporation;
  - (B) Defining, limiting, and regulating the powers of the corporation, its board of directors, and members (or



any class of members); and

(C) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members;

(4) A provision eliminating or limiting the liability of a director to the corporation or its members for monetary damages for any action taken, or any failure to take any action, as a director, except liability:

(A) For any appropriation, in violation of his or her duties, of any business opportunity of the corporation;

(B) For acts or omissions which involve intentional misconduct or a knowing violation of law;

(C) For the types of liability set forth in [Code Sections 14-3-860 to 14-3-864](#); or

(D) For any transaction from which the director received an improper personal benefit,

provided that no such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective;

(5) Any provision that under this chapter is required or permitted to be set forth in the bylaws; and

(6) Provisions not inconsistent with law regarding the distribution of assets on dissolution.

(c) One or more incorporators named in the articles must sign the articles unless the filing is being signed by an attorney in fact.

(d) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1997, p. 1165, § 13; Laws 1999, p. 405, § 18.

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▢ [Article 2. Incorporation \(Refs & Annos\)](#)

➔ **§ 14-3-202.1. Publication of notice of intent to incorporate**

[Code Section 14-2-201.1](#) shall apply equally to the organization of corporations under this chapter, except that the notice to the publisher of the newspaper shall be in substantially the following form:

“NOTICE OF INCORPORATION

Notice is given that articles of incorporation which incorporate \_\_\_\_\_ (name of corporation) have been delivered to the Secretary of State for filing in accordance with the Georgia Nonprofit Corporation Code. The initial registered office of the corporation is located at \_\_\_\_\_ (address of registered office) and its initial registered agent at such address is \_\_\_\_\_ (name of agent).”

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 24, eff. July 1, 2004.](#)

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→ **§ 14-3-203. Incorporation**

(a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(b) The Secretary of State's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or administratively dissolve the corporation.

CREDIT(S)

Laws 1991, p. 465, § 1.

Current through the 2009 Regular Session.

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→ **§ 14-3-204. Liability for preincorporation transactions**

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

CREDIT(S)

Laws 1991, p. 465, § 1.

Current through the 2009 Regular Session.

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→ **§ 14-3-205. Organization of corporations**

(a) After incorporation:

(1) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(2) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(A) To elect directors and complete the organization of the corporation; or

(B) To elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more consents in writing or by electronic transmission describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or out of this state or in accordance with [Code Section 14-3-821](#).

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 25, eff. July 1, 2004](#).

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→ **§ 14-3-206. Bylaws**

- (a) The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.
- (b) The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

CREDIT(S)

Laws 1991, p. 465, § 1.

Current through the 2009 Regular Session.

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→ **§ 14-3-207. Emergency bylaws**

(a) Unless the articles provide otherwise, the directors of a corporation may adopt, amend, or repeal bylaws to be effective only in an emergency defined in subsection (d) of this Code section. The emergency bylaws, which are subject to amendment or repeal by the members, may provide special procedures necessary for managing the corporation during the emergency, including:

- (1) How to call a meeting of the board;
- (2) Quorum requirements for the meeting; and
- (3) Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

- (1) Binds the corporation; and
- (2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this Code section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

CREDIT(S)

Laws 1991, p. 465, § 1.

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▣ [Article 3. Purposes and Powers](#)

→ **§ 14-3-301. Purposes**

(a) Every corporation incorporated under this chapter has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under this chapter only if incorporation under this chapter is not prohibited by the other statute. The corporation shall be subject to all limitations of the other statute.

CREDIT(S)

Laws 1991, p. 465, § 1.

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▣ [Article 3. Purposes and Powers](#)

→ **§ 14-3-302. General powers**

Every corporation has perpetual duration and succession in its corporate name, unless its articles of incorporation adopted on or after April 1, 1969, or in the case of a corporation existing prior to or on April 1, 1969, an amendment thereto adopted on or after April 1, 1969, provides otherwise. Unless its articles of incorporation provide otherwise, every corporation has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power:

- (1) To sue, be sued, complain, and defend in its corporate name;
- (2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing or in any other manner reproducing it;
- (3) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for regulating and managing the affairs of the corporation;
- (4) To purchase, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located;
- (5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (6) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any entity;
- (7) To make contracts and guaranties, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
- (8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by [Code Sections 14-3-860 through 14-3-864](#);
- (9) To be a promoter, fiduciary, shareholder, partner, member, associate, or manager of any partnership, joint

venture, trust, or other entity;

(10) To conduct its activities, locate offices, and exercise the powers granted by this chapter within or without this state;

(11) To elect or appoint directors, officers, delegates, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(12) To pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) To make donations not inconsistent with law for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interest;

(14) To impose dues, assessments, admission fees, and transfer fees upon its members;

(15) To provide insurance for its benefit on the life or physical or mental ability of any of its directors, officers, or employees or any other person whose death or physical or mental disability might cause financial loss to the corporation; or, pursuant to any contract obligating the corporation, as part of compensation arrangements, or pursuant to any contract obligating the corporation as guarantor or surety, on the life of the principal obligor, and for these purposes the corporation is deemed to have an insurable interest in such persons;

(16) To establish conditions for admission of members, admit members, and issue memberships;

(17) To carry on a business; and

(18) To do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

CREDIT(S)

Laws 1991, p. 465, § 1.

Current through the 2009 Regular Session.

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▣ [Article 3. Purposes and Powers](#)

→ **§ 14-3-303. Emergency powers**

(a) In anticipation of or during an emergency defined in subsection (d) of this Code section, the board of directors of a corporation may:

- (1) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and
- (2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency defined in subsection (d) of this Code section, unless emergency bylaws provide otherwise:

- (1) Notice of a meeting of the board of directors need be given only to those directors it is practicable to reach and may be given in any practicable manner, including by publication and radio; and
- (2) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this Code section to further the ordinary affairs of the corporation:

- (1) Binds the corporation; and
- (2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this Code section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

CREDIT(S)

Laws 1991, p. 465, § 1.

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▢ [Article 3. Purposes and Powers](#)

➔ **§ 14-3-304. Ultra vires**

(a) Except as provided in subsection (b) of this Code section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged:

(1) In a proceeding by a member against the corporation to enjoin the act;

(2) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(3) In a proceeding by the Attorney General under [Code Section 14-3-1430](#).

(c) In a member's proceeding under paragraph (1) of subsection (b) of this Code section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 26, eff. July 1, 2004](#).

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▣ [Article 3. Purposes and Powers](#)

➔ **§ 14-3-305. Nonprofit corporations formed, created, or operated by or on behalf of hospital authority**

(a) As used in this Code section, the term “nonprofit” means any corporation which is formed, created, or operated by or on behalf of a hospital authority.

(b) Nonprofits shall have all of the rights, powers, benefits, and purposes granted to other corporations under this chapter and shall not be subject to any restrictions contained in Article 4 of Chapter 7 of Title 31, the “Hospital Authorities Law,” except as provided in subsections (c) and (d) of this Code section.

(c) A director of a nonprofit shall be subject to the provisions of [Code Section 31-7-74.1](#) with respect to conflicts of interest regarding such nonprofit and the hospital authority which formed, created, or operates such nonprofit, and [Code Section 31-7-74.1](#) shall be deemed to apply to such nonprofit and such hospital authority only for such purpose.

(d) A nonprofit shall be subject to the provisions of [Code Section 31-7-90.1](#) with respect to reporting community benefits provided by such nonprofit and with respect to annual reports by such nonprofit disclosing certain transactions with the nonprofit or with the hospital authority which formed, created, or operates the nonprofit and [Code Section 31-7-90.1](#) shall be deemed to apply to both that nonprofit and that hospital authority only for such purposes.

(e) Nothing in this Code section shall be deemed or construed to affect in any manner the provisions of [Code Section 31-7-75.2](#), Chapter 14 of Title 50, or Article 4 of Chapter 18 of Title 50 or to change existing law as to whether such statutory provisions are applicable to nonprofits.

CREDIT(S)

Laws 1997, p. 1404, § 1; [Laws 2004, Act 533, § 27, eff. July 1, 2004](#).

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▾ [Article 4. Corporate Name](#)

➔ **§ 14-3-401. Corporate name**

(a) A corporate name:

- (1) Must contain the word “corporation,” “incorporated,” “company,” or “limited,” or the abbreviation “Corp.,” “Inc.,” “Co.,” or “Ltd.,” or words or abbreviations of like import in a language other than English;
- (2) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by its articles of incorporation and by [Code Section 14-3-301](#);
- (3) May not contain anything which, in the reasonable judgment of the Secretary of State, is obscene; and
- (4) Shall not in any instance exceed 80 characters, including spaces and punctuation.

(b) Except as authorized by subsections (c) and (d) of this Code section, a corporate name must be distinguishable upon the records of the Secretary of State from:

- (1) The corporate name of an incorporated organization, whether for profit or not for profit, incorporated or authorized to transact business in this state;
- (2) A corporate name reserved or registered under this chapter or Chapter 2 of this title;
- (3) The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;
- (4) The name of a limited partnership or professional association reserved or filed with the Secretary of State under Chapter 9 of this title; and
- (5) The name of a limited liability company formed or authorized to transact business in this state.

(c) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon his or her records from one or more of the names described in subsection (b) of this Code section. The Secretary of State shall authorize use of the name applied for if the other corporation consents to the use in writing and files with the Secretary of State articles of amendment to its articles of incorporation changing its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and:

(1) The proposed user corporation has merged with the other corporation;

(2) The proposed user corporation has been formed by reorganization of the other corporation; or

(3) The other domestic or foreign corporation has taken the steps required by this chapter to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the foreign corporation applying to use its former name.

(e) This chapter does not control the use of fictitious or trade names. Issuance of a name under this chapter means that the name is distinguishable for filing purposes on the records of the Secretary of State pursuant to subsection (b) of this Code section. Issuance of a corporate name does not affect the commercial availability of the name.

#### CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1995, p. 482, § 9; [Laws 2004, Act 533, § 68\(3\), eff. July 1, 2004](#).

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▢ [Article 4. Corporate Name](#)

➔ **§ 14-3-402. Reservation of name**

(a) A person may apply to reserve a name for the purpose of incorporation by paying the fee specified in [Code Section 14-3-122](#). If the Secretary of State finds that the corporate name applied for is available, he or she shall reserve the name for the applicant's use for 30 days or until articles of incorporation are filed, whichever is sooner. If the Secretary of State finds that the name applied for is not distinguishable for filing purposes upon the records of the Secretary of State, he or she shall notify the applicant who may then submit another reservation request within ten days of the date of the rejection notice without payment of an additional reservation fee.

(b) Upon expiration of a name reservation after 30 days without the filing of articles of incorporation, the name may again be reserved for another 30 day period by the same or another applicant under the same guidelines of subsection (a) of this Code section.

(c) A person who has in effect a name reservation under subsection (a) of this Code section may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2003, Act 385, § 4, eff. July 1, 2003](#).

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▣ [Article 4. Corporate Name](#)

➔ **§ 14-3-403. Repealed by Laws 2002, p. 989, § 9, eff. July 1, 2002**

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▣ [Article 5](#). Registered Office and Registered Agent

▣ [Part 1](#). General Provisions

→ **§ 14-3-501. Registered office and registered agent**

Each corporation must continuously maintain in this state:

- (1) A registered office with the same address as that of the registered agent; and
- (2) A registered agent, who may be:
  - (A) A person who resides in this state and whose office is identical with the registered office;
  - (B) A domestic business or nonprofit corporation formed under this chapter or under Chapter 2 of this title whose office is identical with the registered office; or
  - (C) A foreign business or nonprofit corporation authorized to transact business in this state whose office is identical with the registered office.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1999, p. 405, § 19.

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▢ [Part 1](#). General Provisions

→ **§ 14-3-502. Change of registered office or registered agent**

(a) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing an amendment to its annual registration that sets forth:

- (1) The name of the corporation;
- (2) The street address of its current registered office;
- (3) If the current registered office is to be changed, the street address of the new registered office;
- (4) The name of its current registered agent;
- (5) If the current registered agent is to be changed, the name of the new registered agent; and
- (6) That after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(b) If the street address of a registered agent's office is changed, the registered agent may change the street address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and by signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (a) of this Code section and recites that the corporation has been notified of the change.

CREDIT(S)

Laws 1991, p. 465, § 1.

Current through the 2009 Regular Session.

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→ **§ 14-3-503. Resignation of registered agent**

(a) A registered agent may resign his or her agency appointment by signing and delivering to the Secretary of State for filing a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) On or before the date of the filing of the statement of resignation, the registered agent shall deliver or mail a written notice of the agent's intention to resign to the chief executive officer, chief financial officer, secretary of the corporation, or a person holding a position comparable to any of the foregoing, as named and at the address shown in the annual registration, or in the articles of incorporation if no annual registration has been filed.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the earlier of the filing by the corporation of an amendment to its annual registration designating a new registered agent and registered office if also discontinued or the thirty-first day after the date on which the statement was filed.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 68\(4\)](#), eff. July 1, 2004.

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→ **§ 14-3-504. Service on corporation**

(a) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(b) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail or statutory overnight delivery, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection on the earliest of:

(1) The date the corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the corporation; or

(3) Five days after its deposit in the United States mail, if mailed postage prepaid and correctly addressed.

(c) This Code section does not prescribe the only means, or necessarily the required means, of serving a corporation.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 2000, p. 1589, § 3.

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→ **§ 14-3-510. Venue**

(a) Venue in proceedings against a corporation shall be determined in accordance with the pertinent constitutional and statutory provisions of this state in effect as of July 1, 1991, or thereafter.

(b) Each domestic corporation and each foreign corporation authorized to transact business in this state shall be deemed to reside and to be subject to venue as follows:

(1) In civil proceedings generally, in the county of this state where the corporation maintains its registered office, or if the corporation fails to maintain a registered office, it shall be deemed to reside in the county where its last named registered office or principal office, as shown by the records of the Secretary of State, was maintained;

(2) In actions based on contracts, in that county in this state where the contract to be enforced was made or is to be performed, if the corporation has an office and transacts business in that county;

(3) In actions for damages because of torts, wrong, or injury done, in the county where the cause of action originated, if the corporation has an office and transacts business in that county;

(4) In actions for damages because of torts, wrong, or injury done, in the county where the cause of action originated. If venue is based solely on this paragraph, the defendant shall have the right to remove the action to the county in Georgia where the defendant maintains its principal place of business. A notice of removal shall be filed within 45 days of service of the summons. Upon motion by the plaintiff filed within 45 days of the removal, the court to which the case is removed may remand the case to the original court if it finds that removal is improper under the provisions of this paragraph. Upon the defendant's filing of a notice of removal, the 45 day time period for filing such notice shall be tolled until the remand, the entry of an order by the court determining that the removal is valid, or the expiration of the time period for the plaintiff to file a motion challenging the removal, whichever occurs first; and

(5) In garnishment proceedings, in the county of this state in which is located the corporate office or place of business where the employee who is the defendant in the main action is employed.

(c) Any residences established by this Code section shall be in addition to, and not in limitation of, any other residence that any domestic or foreign corporation may have by reason of other laws.

(d) Whenever this chapter either requires or permits a proceeding to be brought in the county where the registered office of the corporation is maintained, if the proceeding is against a corporation having a principal office as required under a prior general corporation law, the action or proceeding may be brought in the county where the principal office is located.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 28, eff. July 1, 2004](#).

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→ **§ 14-3-601. Admission of members**

(a) The articles or bylaws may establish criteria or procedures for admission of members.

(b) No person shall be admitted as a member without his or her consent.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 68\(5\), eff. July 1, 2004.](#)

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→ **§ 14-3-602. Consideration to admit members**

Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

CREDIT(S)

Laws 1991, p. 465, § 1.

Current through the 2009 Regular Session.

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→ **§ 14-3-603. Members not required**

A corporation is not required to have members.

CREDIT(S)

Laws 1991, p. 465, § 1.

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→ **§ 14-3-610. Rights and obligations**

Members as defined in paragraph (22) of [Code Section 14-3-140](#) shall have no voting rights, other than to elect directors, except as specifically provided in the articles or bylaws. All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws. Except for the rights specified in [Code Sections 14-3-740](#) through [14-3-747](#), members of any corporation existing on July 1, 1991, shall be limited to having the same voting and other rights as before such date, until changed by amendment of its articles of incorporation or bylaws.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 29, eff. July 1, 2004](#).

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→ **§ 14-3-611. Liability for acts, debts, etc., of corporation**

A member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.

CREDIT(S)

Laws 1991, p. 465, § 1.

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→ **§ 14-3-612. Liability for dues, assessments, or fees**

A member may become liable to the corporation for dues, assessments, or fees; provided, however, that an article or bylaw provision or a resolution adopted by the board authorizing or imposing dues, assessments, or fees does not, of itself, create liability.

CREDIT(S)

Laws 1991, p. 465, § 1.

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→ **§ 14-3-613. Actions by creditors**

(a) No proceeding may be brought by a creditor to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless such action would be useless.

(b) All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection (a) of this Code section to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in such proceeding.

CREDIT(S)

Laws 1991, p. 465, § 1.

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▣ [Part 3. Termination of Membership](#)

→ **§ 14-3-620. Resignation from membership**

(a) Unless otherwise provided by law, a member may resign from membership at any time by delivering notice in writing or by electronic transmission to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date, although the articles or bylaws may require reasonable notice before the resignation is effective.

(b) This Code section shall not relieve the resigning member from any obligation for charges incurred, services or benefits actually rendered, dues, assessments, or fees, or arising from contract, a condition to ownership of land, an obligation arising out of ownership of land, or otherwise, and this Code section shall not diminish any right of the corporation to enforce any such obligation or obtain damages for its breach.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 30, eff. July 1, 2004.](#)

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→ **§ 14-3-621. Expulsion or suspension of members**

Unless otherwise expressly provided in a corporation's articles of incorporation or bylaws or, in the case of a corporation in existence before July 1, 1991, by resolution of the directors or members adopted before that date:

(1) No member of a corporation may be expelled or suspended, and no membership or memberships in such corporations may be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith;

(2) A procedure is fair and reasonable when either:

(A) The articles or bylaws set forth a procedure that provides:

(i) Not less than 15 days' prior written notice of the expulsion, suspension, or termination and the reasons therefor; and

(ii) An opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, termination, or suspension not take place; or

(B) It is fair and reasonable taking into consideration all of the relevant facts and circumstances;

(3) Any written notice given by mail must be given by first-class or certified mail or statutory overnight delivery sent to the last address of the member shown on the corporation's records;

(4) Any proceeding challenging an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension, or termination; and

(5) A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or

fees as a result of obligations incurred or commitments made prior to or during expulsion or suspension.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 2000, p. 1589, § 3.

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▢ [Part 4. Delegates](#)

→ **§ 14-3-630. Rights and authority of delegates**

(a) A corporation may provide in its articles or bylaws for delegates having some or all of the rights and authority of members.

(b) The articles or bylaws may set forth provisions relating to:

(1) The characteristics, qualifications, rights, limitations, and obligations of delegates, including their selection and removal;

(2) Calling, noticing, holding, and conducting meetings of delegates; and

(3) Carrying on corporate activities during and between meetings of delegates.

CREDIT(S)

Laws 1991, p. 465, § 1.

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→ **§ 14-3-701. Annual meeting**

- (a) A corporation with members shall hold a meeting of members annually at a time stated in or fixed in accordance with the bylaws.
- (b) A corporation with members may hold regular meetings of members at the times stated in or fixed in accordance with the bylaws.
- (c) Annual and regular meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual and regular meetings shall be held at the corporation's principal office or other suitable place.
- (d) At the annual meeting:
- (1) The president and chief financial officer shall report on the activities and financial condition of the corporation; and
  - (2) The members shall consider and act upon such other matters as may be raised consistent with the notice requirements of [Code Sections 14-3-705](#) and [14-3-706](#).
- (e) At regular meetings the members shall consider and act upon such matters as may be raised consistent with the notice requirements of [Code Sections 14-3-705](#) and [14-3-706](#).
- (f) The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

CREDIT(S)

Laws 1991, p. 465, § 1.



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→ **§ 14-3-702. Special meeting**

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

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

(2) Except as otherwise provided in the articles or bylaws, if the holders of at least 5 percent of the voting power of any corporation sign, date, and deliver to any corporate officer one or more demands in writing or by electronic transmission for the meeting describing the purpose or purposes for which it is to be held.

(b) If not otherwise fixed under [Code Section 14-3-703](#) or [Code Section 14-3-707](#), the record date for determining members entitled to demand a special meeting is the date the first member signs the demand.

(c) If a notice for a special meeting demanded under paragraph (2) of subsection (a) of this Code section is not given pursuant to [Code Section 14-3-705](#) within 30 days after the date the demand or demands in writing or by electronic transmission are delivered to a corporate officer, regardless of the requirements of subsection (d) of this Code section, a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to [Code Section 14-3-705](#).

(d) Special meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office or other suitable place.

(e) Only those matters that are within the purpose or purposes described in the meeting notice required by [Code Section 14-3-705](#) may be conducted at a special meeting of members.

(f) Unless otherwise provided in the articles, a demand by a member for a special meeting may be revoked by a written or electronic transmission to that effect by the member received by the corporation prior to the call of the special meeting.

(g) A bylaw provision governing the voting power required to call special meetings is not a quorum or voting re-

quirement.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 31](#), eff. July 1, 2004.

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→ **§ 14-3-703. Court-ordered meeting**

(a) The superior court may summarily order a meeting to be held:

(1) On application of any member or other person entitled to participate in an annual meeting, or, in the case of a corporation described in paragraph (2) of subsection (a) of [Code Section 14-3-1302](#), the Attorney General, if an annual meeting was not held within the earlier of six months after the end of a fiscal year of the corporation or 15 months after its last annual meeting; or

(2) On application of any member or other person entitled to participate in a regular meeting, or, in the case of a corporation described in paragraph (2) of subsection (a) of [Code Section 14-3-1302](#), the Attorney General, if a regular meeting is not held within 40 days after the date it was required to be held; or

(3) On application of a member who signed a demand for a special meeting valid under [Code Section 14-3-702](#), a person or persons entitled to call a special meeting, or, in the case of a corporation described in paragraph (2) of subsection (a) of [Code Section 14-3-1302](#), the Attorney General, if:

(A) Notice of the special meeting was not given within 30 days after the date the demand was delivered to a corporate officer; or

(B) The special meeting was not held in accordance with the notice.

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

(c) If the court orders a meeting, it may also order the corporation to pay the member's or other person's costs (including reasonable counsel fees) incurred to obtain the order.

CREDIT(S)

Laws 1991, p. 465, § 1.

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→ **§ 14-3-704. Action without meeting**

- (a) Unless limited or prohibited by the articles or bylaws, or unless this chapter requires a greater number of affirmative votes, action required or permitted by this chapter to be approved by the members may be approved without a meeting of members if the action is approved by members holding at least a majority of the voting power. The action must be evidenced by one or more consents in writing or by electronic transmission describing the action taken, signed by those members representing at least a majority of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.
- (b) No consent in writing or by electronic transmission signed under this Code section shall be valid unless:
- (1) The consenting member has been furnished the same material that, under this chapter, would have been required to be sent to members in a notice of a meeting at which the proposed action would have been submitted to the members for action; or
  - (2) The written consent contains an express waiver of the right to receive the material otherwise required to be furnished.
- (c) If not otherwise determined under [Code Section 14-3-703](#) or [Code Section 14-3-707](#), the record date for determining members entitled to take action without a meeting is the date the first member signs the consent.
- (d) A consent signed under this Code section has the effect of a meeting vote and may be described as such in any document.
- (e) Written notice of member approval pursuant to this Code section shall be given to all members who have not signed the written consent. If written notice is required, member approval pursuant to this Code section shall be effective ten days after such written notice is given.
- (f) An electronic transmission which is transmitted by a member that evidences a member's consent or approval on a ballot, requests or demands an action to be taken by the corporation, or provides notice to the corporation under this chapter shall be deemed to be written, signed, and dated for the purposes of this chapter, provided that

any such electronic transmission sets forth or is delivered with information from which the corporation can determine (1) that the electronic transmission was transmitted by the member and (2) the date on which such member transmitted such electronic transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent, request, demand, or notice was signed.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 32, eff. July 1, 2004](#).

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→ **§ 14-3-705. Notice of meeting**

(a) A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

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

(c) Notice is fair and reasonable if:

(1) The corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members no fewer than ten days (or if notice is mailed by other than first-class or registered mail or statutory overnight delivery, 30 days) nor more than 60 days before the meeting date;

(2) Notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the members under [Code Section 14-3-855](#), [14-3-863](#), [14-3-1003](#), [14-3-1021](#), [14-3-1103](#), [14-3-1202](#), or [14-3-1402](#); and

(3) Notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(d) Unless the bylaws require otherwise, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under [Code Section 14-3-707](#), however, notice of the adjourned meeting must be given under this Code section to the members of record as of the new record date.

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



(1) Requested in writing or by electronic transmission to do so by a person entitled to call a special meeting;  
and

(2) The request is received by the secretary or president of the corporation at least ten days before the corporation gives notice of the meeting.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 2000, p. 1589, § 4; [Laws 2004, Act 533, § 33, eff. July 1, 2004](#).

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→ **§ 14-3-706. Waiver of notice**

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

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

(1) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 34, eff. July 1, 2004](#).

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→ **§ 14-3-707. Record date**

(a) The bylaws may fix or provide the manner of fixing the record date to determine the members entitled to notice of a members' meeting, to demand a special meeting to vote, or to take any other action. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date.

(b) A record date fixed under this Code section may not be more than 70 days before the meeting or action requiring a determination of members.

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

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

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-708. Action by written ballot**

(a) Unless prohibited or limited by the articles or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a ballot in writing or by electronic transmission to every member entitled to vote on the matter.

(b) A ballot in writing or by electronic transmission shall:

(1) Set forth each proposed action; and

(2) Provide an opportunity to vote for or against each proposed action.

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

(d) All solicitations for votes by ballot in writing or by electronic transmission shall:

(1) Indicate the number of responses needed to meet the quorum requirements;

(2) State the percentage of approvals necessary to approve each matter other than election of directors; and

(3) Specify the time by which a ballot must be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles or bylaws, a ballot in writing or by electronic transmission may not be revoked.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 35, eff. July 1, 2004](#).

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→ **§ 14-3-720. Members' list for meeting**

- (a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address of and number of votes each member is entitled to vote at the meeting. Nothing contained in this Code section shall require the corporation to include e-mail addresses or other information for delivery of electronic transmissions on such list.
- (b) The list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning two business days after notice is given of the meeting for which the list was prepared and continuing through the meeting: (1) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting or upon request or (2) during ordinary business hours at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. In the event that the corporation makes the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to members of the corporation. A member, a member's agent, or a member's attorney is entitled on written demand to inspect and, subject to the limitations of subsection (c) of [Code Section 14-3-1602](#) and [Code Section 14-3-1605](#), to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.
- (c) If the meeting is to be held in person, the corporation shall make the list of members available at the meeting, and any member, a member's agent, or member's attorney is entitled to inspect the list at any time during the meeting or any adjournment. If the meeting is to be held solely by means of remote communication, then the list shall be open to the examination of any member during the duration of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.
- (d) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting (or copy the list as permitted by subsection (b) of this Code section), the superior court, on application of the member, 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.
- (e) Refusal or failure to prepare or make available the members' list does not affect the validity of action taken at

the meeting.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 36, eff. July 1, 2004.](#)

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→ **§ 14-3-721. Voting entitlement**

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

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

(1) If only one votes, such act binds all; and

(2) If more than one votes, the vote shall be divided on a pro rata basis.

CREDIT(S)

Laws 1991, p. 465, § 1.

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→ **§ 14-3-722. Quorum**

(a) Unless this chapter, the articles, or bylaws provide for a higher or lower quorum, 10 percent of the votes entitled to be cast on a matter must be represented at a meeting of members to constitute a quorum on that matter.

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

(c) A bylaw amendment to increase the quorum required for any member action must be approved by the members.

(d) Unless 20 percent or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice.

CREDIT(S)

Laws 1991, p. 465, § 1.

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→ **§ 14-3-723. Vote required for member action**

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

(b) A bylaw amendment to increase or decrease the vote required for any member action must be approved by the members.

CREDIT(S)

Laws 1991, p. 465, § 1.

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→ **§ 14-3-724. Proxies**

- (a) Unless the articles or bylaws prohibit or limit proxy voting, a member may vote in person or by proxy.
- (b) A member or his or her agent or attorney in fact may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which it can be determined that the member, the member's agent, or the member's attorney in fact authorized the electronic transmission.
- (c) An appointment of a proxy is effective when a signed appointment form or electronic transmission of the appointment is received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form.
- (d) An appointment of a proxy is revocable by the member.
- (e) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.
- (f) Appointment of a proxy is revoked by the person appointing the proxy:
- (1) Attending any meeting and voting in person; or
  - (2) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.
- (g) Subject to [Code Section 14-3-727](#) and any express limitation on the proxy's authority appearing on the face of the appointment form or in the electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

(h) Any copy, facsimile transmission, or other reliable reproduction of the writing or electronic transmission created pursuant to subsection (b) of this Code section may be substituted or used in lieu of the original writing or electronic transmission for any and all purposes for which the original writing or electronic transmission could be used, provided that such copy, facsimile transmission, or other reproduction shall be a complete reproduction of the entire original writing or electronic transmission.

(i) A corporation may adopt bylaws authorizing additional means or procedures for members to exercise rights granted by this Code section.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 37, eff. July 1, 2004](#).

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→ **§ 14-3-725. Voting for directors; cumulative voting**

(a) Unless otherwise provided in the articles, directors are elected by a majority of the votes cast by the members entitled to vote in the election at a meeting at which a quorum is present.

(b) If the articles or bylaws provide for cumulative voting by members, members may so vote, by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote, and cast the product for a single candidate or distribute the product among two or more candidates.

(c) Cumulative voting is not authorized at a particular meeting unless:

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

(2) A member gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes, and if one member gives this notice all other members participating in the election are entitled to cumulate their votes without giving further notice.

(d) A director elected by cumulative voting may be removed by the members without cause if the requirements of [Code Section 14-3-808](#) are met, unless the votes cast against removal or not consenting in writing to such removal would be sufficient to elect such director if voted cumulatively at an election at which the same total number of votes were cast (or, if such action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.

(e) Members may not cumulatively vote if the directors and members are identical.

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-726. Basis of election of directors**

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

- (1) On the basis of chapter or other organizational unit;
- (2) By region or other geographic unit;
- (3) By preferential voting; or
- (4) By any other reasonable method.

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Laws 1991, p. 465, § 1.

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## Title 14. Corporations, Partnerships, and Associations

Chapter 3. Nonprofit Corporations ([Refs & Annos](#))▣ [Article 7. Meetings](#)▣ [Part 2. Voting](#)→ **§ 14-3-727. Corporation's acceptance of votes**

- (a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.
- (b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:
- (1) The member is an entity and the name signed purports to be that of an officer or agent of the entity;
  - (2) The name signed purports to be that of an attorney in fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment;
  - (3) Two or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders;
  - (4) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member 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; or
  - (5) The name signed purports to be that of a receiver or trustee in bankruptcy of the member, 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.
- (c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member or about the faithfulness or completeness of the reproduction when the original has not been examined.



(d) The corporation and its officer or agent who accept or reject a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this Code section or subsection (b) of [Code Section 14-3-724](#) are not liable in damages to the member for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this Code section or subsection (b) of [Code Section 14-3-724](#) is valid unless a court of competent jurisdiction determines otherwise.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 38, eff. July 1, 2004](#).

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→ **§ 14-3-730. Voting agreements**

(a) Two or more members may provide for the manner in which they will vote by signing an agreement for that purpose. Such agreements may be valid for a period of up to 20 years. For corporations described in paragraph (2) of subsection (a) of [Code Section 14-3-1302](#), such agreements must have a reasonable purpose not inconsistent with the corporation's public or charitable purposes.

(b) A voting agreement created under this Code section is specifically enforceable.

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-740. Definitions**

As used in this part, the term:

(1) “Derivative proceeding” means a civil suit in the right of a domestic corporation or, to the extent provided in [Code Section 14-3-747](#), in the right of a foreign corporation.

(2) “Member” includes those who are members under [Code Section 14-3-140](#), as well as any person who is entitled to some portion of the corporation's property upon dissolution, and any person or class of persons specifically designated in the corporation's bylaws or articles of incorporation as having standing to bring a derivative proceeding.

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→ **§ 14-3-741. Standing**

A derivative proceeding may be brought either by any director or by any member or members having 5 percent or more of the voting power or by 50 members, whichever is less. A director or members may not commence or maintain a derivative proceeding unless the director or members:

- (1) Was a director or were members of the corporation at the time of the act or omission complained of (or became a member through transfer by operation of law from one who was a member at that time); or is a director or are members at the time the proceeding is commenced; and
- (2) Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-742. Demand**

(a) No derivative proceeding may be commenced until:

(1) A written demand has been made upon the corporation to take suitable action; and

(2) Ninety days have expired from the date the demand was made unless the complainant 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.

(b) In the case of corporations described in subsection (a) of [Code Section 14-3-1302](#), the complainant shall deliver a copy of the demand to the Attorney General within ten days of making the demand on the corporation.

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-743. Stay of proceedings**

If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-744. Dismissal**

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

(b) The determination in subsection (a) of this Code section shall be made by:

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

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

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

(c) None of the following shall by itself cause a director to be considered not independent for purposes of subsection (b) of this Code section:

(1) The nomination or election of the director by directors who are not independent;

(2) The naming of the director as a defendant in the derivative proceeding; or

(3) The fact that the director approved the action being challenged in the derivative proceeding so long as the director did not receive a personal benefit as a result of the action.

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-745. 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 members or a class of members, the court shall direct that notice be given to the members affected.

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-746. Payment of expenses**

On termination of the derivative proceeding the court may:

(1) Order the corporation to pay the plaintiff's reasonable expenses (including attorneys' fees) incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation; or

(2) Order the plaintiff to pay any defendant's reasonable expenses (including attorneys' fees) incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-747. Applicability to foreign corporations**

In any derivative proceeding in the right of a foreign corporation, the matters covered by this part shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for [Code Sections 14-3-743](#) and [14-3-745](#) and paragraph (2) of [Code Section 14-3-746](#).

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-801. Requirement for and duties of board of directors**

(a) Each corporation must have a board of directors.

(b) Except as provided in this chapter or subsection (c) of this Code section, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board.

(c) No limitation upon the authority of the directors, whether contained in the articles of incorporation or bylaws, shall be effective against persons, other than members and directors, who are without actual knowledge of the limitation.

(d) The articles may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities.

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-802. Qualifications of directors**

Directors shall be natural persons who are 18 years of age or older but need not be residents of this state nor members of the corporation unless the articles so require. The articles or bylaws may prescribe other qualifications for directors.

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-803. Number of directors**

(a) A board of directors must consist of one or more natural persons, with the number specified in or fixed in accordance with the articles or bylaws.

(b) The articles or bylaws may authorize the members of the board of directors to fix or change the number of directors or may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If the variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the members, or if the articles or bylaws so provide, by the board of directors.

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-804. Election of directors**

(a) If the corporation has members, all the directors (except the initial directors) shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election, or provide that some or all of the directors are appointed by some other person or designated.

(b) If the corporation does not have members, all the directors (except the initial directors) shall be elected, appointed, or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors (other than the initial directors) shall be elected by the board.

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-805. Terms of directors**

(a) The terms of the initial directors of a corporation expire at the first meeting of members or directors for the election of directors or for such other period as may be specified in the articles of incorporation or bylaws. The articles or bylaws may specify the terms of directors. In the absence of any term specified in the articles or bylaws, the term of each director other than initial directors shall be one year. Directors may be elected for successive terms.

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

(c) A director elected to fill a vacancy shall be elected for the unexpired term of the director's predecessor in office.

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

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-806. Staggering terms of directors**

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 several groups need not be uniform.

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-807. Resignation of directors**

(a) A director may resign at any time by delivering notice in writing or by electronic transmission to the board of directors, its presiding officer, or to the president or secretary, or in such other manner as the articles or bylaws may provide.

(b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 39, eff. July 1, 2004.](#)

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→ **§ 14-3-808. Removal of elected directors by members**

Unless the corporation's articles or bylaws provide otherwise:

- (1) The members may remove, with or without cause, one or more directors elected by them;
- (2) If a director is elected by a class, chapter, or other organizational unit or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit, or grouping;
- (3) Except as provided in paragraph (9) of this Code section, a director may be removed under paragraph (1) or (2) of this Code section only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors;
- (4) If cumulative voting is authorized, a director may not be removed if the number of votes, or if the director was elected by a class, chapter, unit, or grouping of members, the director may not be removed if the number of votes of that class, chapter, unit, or grouping, sufficient to elect the director under cumulative voting is voted against the director's removal;
- (5) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director;
- (6) In computing whether a director is protected from removal under paragraphs (2) through (4) of this Code section, it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election;
- (7) An entire board of directors may be removed under paragraphs (1) through (5) of this Code section;
- (8) A director elected by the board may be removed with or without cause by the vote of two-thirds of the directors then in office; provided, however, that a director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not the board; and

(9) If, at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

CREDIT(S)

Laws 1991, p. 465, § 1.

Current through the 2009 Regular Session.

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→ **§ 14-3-809. Removal of designated or appointed directors**

(a) A designated director may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(b) Except as otherwise provided in the articles or bylaws:

(1) An appointed director may be removed without cause by the person appointing the director;

(2) The person removing the director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary; and

(3) A removal is effective when the notice is effective unless the notice specifies a future effective date.

CREDIT(S)

Laws 1991, p. 465, § 1.

Current through the 2009 Regular Session.

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▢ [Part 1. Board of Directors](#)

→ **§ 14-3-810. Removal of directors by court**

(a) The superior court may remove any director of the corporation from office in a proceeding commenced either by the corporation, its members holding at least 10 percent of the voting power of any class, or, in the case of a corporation described in paragraph (2) of subsection (a) of [Code Section 14-3-1302](#), the Attorney General, if the court finds that:

(1) The director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation, or a final judgment has been entered finding that the director has violated a duty set forth in [Code Section 14-3-830](#) or [14-3-831](#), or the director has been subjected to sanction for participation in a “director’s conflicting interest transaction” as defined in paragraph (2) of [Code Section 14-3-860](#); and

(2) Removal is in the best interest of the corporation.

(b) The court that removes a director may bar the director from serving on the board for a period prescribed by the court.

(c) If members or the Attorney General commence a proceeding under subsection (a) of this Code section, the corporation shall be made a party defendant.

CREDIT(S)

Laws 1991, p. 465, § 1.

Current through the 2009 Regular Session.

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→ **§ 14-3-811. Vacancy on board**

(a) Unless the articles or bylaws provide otherwise, and except as provided in subsections (b) and (c) of this Code section, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) The members, if any, may fill the vacancy; if the vacant office was held by a director elected by a class, chapter, or other organizational unit or by region or other geographic grouping, only members of the class, chapter, unit, or grouping are entitled to vote to fill the vacancy if it is filled by the members;

(2) The board of directors may fill the vacancy; or

(3) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(c) If a vacant office was held by a designated director, the vacancy shall be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy may not be filled by the board.

(d) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under subsection (b) of [Code Section 14-3-807](#) or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

CREDIT(S)

Laws 1991, p. 465, § 1.

Current through the 2009 Regular Session.



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→ **§ 14-3-812. Compensation of directors**

Unless the articles or bylaws provide otherwise, a board of directors may fix the compensation of directors.

CREDIT(S)

Laws 1991, p. 465, § 1.

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→ **§ 14-3-813. Appointment of provisional director**

(a) If the directors of a corporation are deadlocked in the management of the corporate affairs and the members are unable to break the deadlock and if injury to the corporation is being suffered or is threatened by reason thereof, the superior court may, notwithstanding any provisions of the articles of incorporation or bylaws of the corporation to the contrary and whether or not an action is pending for an involuntary dissolution of the corporation, appoint a provisional director pursuant to this Code section.

(b) Action for such appointment may be filed by one-half of the directors or by members holding not less than one-third of all the votes entitled to be cast in an election of directors. Notice of such action shall be served upon the directors, other than those who have filed the action, and upon the corporation in the manner provided by law for service of a summons and complaint, and a hearing shall be held not less than ten days after such service is effected. At such hearing all interested persons shall be given an opportunity to be heard.

(c) The provisional director shall be an impartial person who is neither a member nor a creditor of the corporation nor related by consanguinity or affinity within the third degree, as computed according to the civil law, to any of the other directors of the corporation or to any judge of the court by which he or she is appointed. The provisional director shall have all the rights and powers of a director and shall be entitled to notice of the meetings of the board of directors and to vote at such meetings until he or she is removed by order of the court or by vote or written consent of a majority of the directors or of members holding a majority of the votes entitled to be cast in an election of directors. He or she shall be entitled to receive such compensation as may be agreed upon between him or her and the corporation; and, in the absence of such agreement, he or she shall be entitled to such compensation as shall be fixed by the court.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, §§ 66\(4\), 67\(2\), eff. July 1, 2004.](#)

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→ **§ 14-3-820. Meetings**

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

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

CREDIT(S)

Laws 1991, p. 465, § 1.

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▣ [Part 2. Meetings and Action of the Board](#)

→ **§ 14-3-821. Action without meeting**

(a) Unless the articles or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken in accordance with subsection (b) of this Code section.

(b) Action taken without a meeting shall be taken by all members of the board, unless the articles or bylaws specifically permit such action to be taken by less than all, but not less than a majority of the board. The action must be evidenced by one or more consents in writing or by electronic transmission describing the action taken, signed by no fewer than the required number of directors, and delivered to the corporation for inclusion in the minutes for filing with the corporate records reflecting the action taken. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

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

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

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 40, eff. July 1, 2004.](#)

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→ **§ 14-3-822. Notice of meeting**

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

(b) Unless the articles or bylaws provide otherwise, special meetings of the board must be preceded by at least two days' notice to each director of the date, time, and place, but not the purpose, of the meeting.

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-823. Waiver of notice**

(a) A director may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b) of this Code section, the waiver must be in writing or by electronic transmission, signed by the director entitled to the notice, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless the director at the beginning of the meeting (or promptly upon his or her arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

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Laws 1991, p. 465, § 1; [Laws 2004, Act 533, §§ 41, 67, 68, eff. July 1, 2004.](#)

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→ **§ 14-3-824. Quorum and voting**

(a) Except as otherwise provided in this chapter, the articles, or the bylaws, a quorum of a board of directors consists of:

(1) A majority of the fixed number of directors if the corporation has a fixed board size; or

(2) A majority of the number of directors prescribed or, if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(b) The articles or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined under subsection (a) of this Code section.

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless this chapter, the articles, or the bylaws require the vote of a greater number of directors.

(d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:

(1) The director objects at the beginning of the meeting (or promptly upon arrival) to holding it or transacting business at the meeting;

(2) The director's dissent or abstention from the action taken is entered in the minutes of the meeting; or

(3) The director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting.

The right of dissent or abstention is not available to a director who votes in favor of the action taken.



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Laws 1991, p. 465, § 1.

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→ **§ 14-3-825. Committees**

- (a) Unless the articles or bylaws provide otherwise, a board of directors may create one or more committees of the board and appoint members of the board to serve on them. Each committee shall have one or more directors, who serve at the pleasure of the board.
- (b) If authorized by the articles or bylaws, the board or, if there are members entitled to elect directors, the members may appoint individuals who are not currently members of the board, but who formerly were members of the board of the corporation, as voting members of committees of the board. All provisions of this article applicable to directors shall apply equally to such individuals.
- (c) [Code Sections 14-3-820](#) through [14-3-824](#), which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board, apply to committees and their members as well.
- (d) To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under [Code Section 14-3-801](#).
- (e) A committee may not, however:
- (1) Authorize distributions;
  - (2) Approve or recommend to members dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the corporation's assets;
  - (3) Elect, appoint, or remove directors or fill vacancies on the board or on any of its committees; or
  - (4) Adopt, amend, or repeal the articles or bylaws.
- (f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by

a director with the standards of conduct described in [Code Section 14-3-830](#).

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-830. Standards for directors**

Unless a different standard is prescribed by law:

(1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(A) In a manner the director believes in good faith to be in the best interests of the corporation; and

(B) With the care an ordinarily prudent person in a like position would exercise under similar circumstances;

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

(A) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(B) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence;

(C) A committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence; or

(D) Religious authorities, ministers, priests, rabbis, or other persons whose positions or duties in the corporation the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented;

(3) In the instances described in paragraph (2) of this Code section, a director is not entitled to rely if he has knowledge concerning the matter in question that makes reliance otherwise permitted by paragraph (2) of this

Code section unwarranted;

(4) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director if the director acted in compliance with this Code section; and

(5) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including, without limit, property that may be subject to restrictions imposed by the donor or transferor of such property.

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Laws 1991, p. 465, § 1.

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▣ [Part 3. Standards of Conduct](#)

→ **§ 14-3-831. Liability for unlawful distributions**

(a) Unless a director complies with the applicable standards of conduct described in [Code Section 14-3-830](#), a director who votes for or assents to a distribution made in violation of this chapter is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter.

(b) A director held liable for an unlawful distribution under subsection (a) of this Code section is entitled to contribution:

(1) From every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in [Code Section 14-3-830](#); and

(2) From each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of this chapter.

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-840. Required officers**

- (a) A corporation has the officers described in its articles or bylaws or appointed by the board of directors in accordance with the articles or bylaws.
- (b) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the articles or bylaws or the board of directors.
- (c) The articles, bylaws, or the board shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.
- (d) Unless otherwise provided in the articles or bylaws, the same individual may simultaneously hold more than one office in a corporation.
- (e) The officers of a corporation may be designated by such titles as may be provided in the articles or the bylaws; and in such case any document required or permitted by any law of this state to be signed by the president, secretary, or any other named officer of a corporation may be signed by such officer as may be stated in such document to correspond to the officer so required or permitted to sign.

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-841. Duties of officers**

Each officer has the authority and shall perform the duties set forth in the articles or bylaws or, to the extent consistent with the articles or bylaws, the duties and authority prescribed by the board or by direction of an officer authorized by the board to prescribe the duties and authority of other officers. Unless the articles, bylaws, or a resolution of the board of directors of the corporation provides otherwise, the chief executive officer or the president if no person has been designated as chief executive officer of the corporation shall have authority to conduct all ordinary business on behalf of the corporation and may execute and deliver on behalf of the corporation any contract, conveyance, or similar document not requiring approval by the board of directors or members as provided in this chapter.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 42, eff. July 1, 2004.](#)

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→ **§ 14-3-842. Standards of conduct for officers**

Unless a different standard is prescribed by law:

(1) An officer with discretionary authority shall discharge his or her duties under that authority:

(A) In a manner he or she believes in good faith to be in the best interests of the corporation; and

(B) With the care an ordinarily prudent person in a like position would exercise under similar circumstances;

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

(A) One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(B) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence;

(3) In the instances described in paragraph (2) of this Code section, an officer is not entitled to rely if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by paragraph (2) of this Code section unwarranted; and

(4) An officer is not liable to the corporation, any member, or other person for any action taken or not taken as an officer, if the officer performed the duties of his or her office in compliance with this Code section.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, §§ 66\(5\), 68\(7\), eff. July 1, 2004.](#)

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→ **§ 14-3-843. Resignation and removal of officers**

(a) An officer may resign at any time by delivering notice in writing or by electronic transmission to the corporation. A resignation is effective when the notice is effective unless the notice specifies a future effective date. If a resignation is made effective at a future date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

(b) A board may remove any officer at any time with or without cause.

(c) Unless otherwise provided in the articles or bylaws, any vacancies in the corporation's officers may be filled by the board.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 43, eff. July 1, 2004.](#)

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→ **§ 14-3-844. Contract rights of officers**

(a) The appointment of an officer does not itself create contract rights.

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

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Laws 1991, p. 465, § 1.

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▢ [Part 4. Officers](#)

→ **§ 14-3-845. Effect of lack of authority of officers signing contracts**

Any contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the contract or other instrument if it is signed by any two officers in category 1 below or by one officer in category 1 below and one officer in category 2 below. Categories shall be as follows:

(1) Category 1 shall consist of the presiding officer of the board and the president; and

(2) Category 2 shall consist of a vice president, the secretary, the treasurer, and the executive director.

The absence of the signature of such persons from a document shall not itself impair the validity of the document or of any action taken in pursuance thereof or in reliance thereon.

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-846. Corporate seal**

(a) With respect to any contract, conveyance, or similar document executed by or on behalf of a domestic or foreign corporation, the presence of the corporate seal, or a facsimile thereof, attested by the secretary or assistant secretary of the corporation, or other officer to whom the bylaws or the directors have delegated the responsibility for authenticating records of the corporation, shall attest:

(1) That the corporate seal or facsimile thereof affixed to the document is in fact the seal of the corporation or a true facsimile thereof, as the case may be;

(2) That any officer of the corporation executing the document does in fact occupy the official position indicated, that one in such position is duly authorized to execute such document on behalf of the corporation, and that the signature of such officer subscribed thereto is genuine; and

(3) That the execution of the document on behalf of the corporation has been duly authorized.

(b) When the seal of a corporation or the facsimile thereof is affixed to any document and is attested by the secretary or assistant secretary of a corporation, or other officer to whom the bylaws or the directors have delegated the responsibility for authenticating records of the corporation, a third party without knowledge or reason to know to the contrary may rely on such document as being what it purports to be.

(c) The seal of the corporation may be affixed to any document executed by the corporation, but the absence of the seal shall not itself impair the validity of the document or of any action taken in pursuance thereof or in reliance thereon.

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Laws 1991, p. 465, § 1.

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▢ [Part 5. Indemnification](#)

→ **§ 14-3-850. Definitions**

As used in this part, the term:

(1) “Corporation” includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) “Director” or “officer” means an individual who is or was a director or officer, respectively, of a corporation who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. “Director” or “officer” includes, unless the context otherwise requires, the estate or personal representative of a director.

(3) “Disinterested director” means a director who at the time of a vote referred to in subsection (c) of [Code Section 14-3-853](#) or a vote or selection referred to in subsection (b) or (c) of [Code Section 14-3-855](#) is not:

(A) A party to the proceeding; or

(B) An individual having a familial, financial, professional, or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the decision being made.

(4) “Expenses” includes counsel fees.

(5) “Liability” means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses actually incurred with respect to a proceeding.



(6) “Official capacity” means:

(A) When used with respect to a director, the office of director in a corporation; and

(B) When used with respect to an officer, as contemplated in [Code Section 14-3-857](#), the office in a corporation held by the officer.

“Official capacity” does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.

(7) “Party” means an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(8) “Proceeding” means any threatened, pending, or completed action, suit, or proceeding whether civil, criminal, administrative, arbitral, or investigative and whether formal or informal.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1997, p. 1165, § 14.

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→ **§ 14-3-851. Authority to indemnify**

(a) Except as otherwise provided in this Code section, a corporation may indemnify an individual who is a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if:

(1) He or she conducted himself or herself in good faith; and

(2) He or she reasonably believed:

(A) In the case of conduct in his or her official capacity, that his or her conduct was in the best interests of the corporation;

(B) In all other cases, that his or her conduct was at least not opposed to the best interests of the corporation; and

(C) In the case of any criminal proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose the director believed in good faith to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subsection (a) of this Code section.

(c) The termination of a proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this Code section.

(d) A corporation may not indemnify a director under this Code section:

(1) In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of

conduct under this Code section; or

(2) In connection with any other proceeding with respect to conduct for which the director was adjudged liable on the basis that personal benefit was improperly received by the director, whether or not involving action in the director's official capacity.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1997, p. 1165, § 14.

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→ **§ 14-3-852. Mandatory indemnification**

A corporation shall indemnify a director who was successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1997, p. 1165, § 14.

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→ **§ 14-3-853. Advance or reimbursement for expenses**

(a) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding because the director is a director if the director delivers to the corporation:

(1) A written affirmation of the director's good faith belief that the director has met the relevant standard of conduct described in [Code Section 14-3-851](#) or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by paragraph (4) of subsection (b) of [Code Section 14-3-202](#); and

(2) The director's written undertaking to repay any funds advanced if it is ultimately determined that the director is not entitled to indemnification under this part.

(b) The undertaking required by paragraph (2) of subsection (a) of this Code section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(c) Authorizations under this Code section shall be made by the board of directors:

(1) If there are two or more disinterested directors, by a majority vote of all the disinterested directors (a majority of whom shall for such purpose constitute a quorum) or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote; or

(2) If there are fewer than two disinterested directors, by the vote necessary for action by the board in accordance with subsection (c) of [Code Section 14-3-824](#), in which authorization directors who do not qualify as disinterested directors may participate.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1997, p. 1165, § 14; Laws 1998, p. 128, § 14.

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→ **§ 14-3-854. Court ordered indemnification**

(a) A director who is a party to a proceeding because he or she is a director may apply for indemnification or advances of expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application, after giving any notice it considers necessary, the court shall:

(1) Order indemnification or advance for expenses if it determines that the director is entitled to indemnification under this part; or

(2) Order indemnification or advance for expenses if it determines, in view of all the relevant circumstances, that it is fair and reasonable:

(A) To indemnify the director; or

(B) To advance expenses to the director,

even if he or she has not met the relevant standard of conduct set forth in subsections (a) and (b) of [Code Section 14-3-851](#), failed to comply with [Code Section 14-3-853](#), or was adjudged liable in a proceeding referred to in paragraph (1) or (2) of subsection (d) of [Code Section 14-3-851](#), but if he or she was adjudged so liable his or her indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.

(b) If the court determines that the director is entitled to indemnification or advance for expenses under this part, it may also order the corporation to pay the director's reasonable expenses to obtain court ordered indemnification or advance for expenses.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1994, p. 97, § 14; Laws 1997, p. 1165, § 14.

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→ **§ 14-3-855. Determination and authorization of indemnification**

(a) A corporation may not indemnify a director under [Code Section 14-3-851](#) unless authorized thereunder and a determination has been made for a specific proceeding that indemnification of the director is permissible in the circumstances because the director has met the relevant standard of conduct set forth in [Code Section 14-3-851](#).

(b) The determination shall be made:

(1) If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors (a majority of whom shall for such purpose constitute a quorum), or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote;

(2) By special legal counsel:

(A) Selected in the manner prescribed in paragraph (1) of this subsection; or

(B) If there are fewer than two disinterested directors, selected by the board of directors, in which selection directors who do not qualify as disinterested directors may participate; or

(3) By the members, but directors who do not qualify as disinterested directors may not vote as members on the determination.

(c) Authorization of indemnification or an obligation to indemnify and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two disinterested directors or if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under paragraph (3) of subsection (b) of this Code section to select special legal counsel.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1997, p. 1165, § 14.

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→ **§ 14-3-856. Indemnification of officers, employees, and agents**

(a) A corporation may indemnify and advance expenses under this part to an officer of the corporation who is a party to a proceeding because he or she is an officer of the corporation:

(1) To the same extent as a director; and

(2) If he or she is not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract except for liability arising out of conduct that constitutes:

(A) Appropriation, in violation of his or her duties, of any business opportunity of the corporation;

(B) Acts or omissions which involve intentional misconduct or a knowing violation of law;

(C) The types of liability set forth in [Code Section 14-3-831](#); or

(D) Receipt of an improper personal benefit.

(b) The provisions of paragraph (2) of subsection (a) of this Code section shall apply to an officer who is also a director if the sole basis on which he or she is made a party to the proceeding is an act or omission solely as an officer.

(c) An officer of a corporation who is not a director is entitled to mandatory indemnification under [Code Section 14-3-852](#), and may apply to a court under [Code Section 14-3-854](#) for indemnification or advances for expenses, in each case to the same extent to which a director may be entitled to indemnification or advances for expenses under those provisions.

(d) A corporation may also indemnify and advance expenses to an employee or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or

specific action of its board of directors, or contract.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1994, p. 97, § 14; Laws 1997, p. 1165, § 14; [Laws 2004, Act 533, § 44, eff. July 1, 2004](#).

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→ **§ 14-3-857. Insurance**

A corporation may purchase and maintain insurance on behalf of an individual who is a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other entity against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify or advance expenses to the individual against the same liability under this part.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1997, p. 1165, § 14.

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→ **§ 14-3-858. Application**

(a) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or members, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification or advance funds to pay for or reimburse expenses consistent with this part. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with [Code Section 14-3-853](#) to the fullest extent permitted by law, unless the provision specifically provides otherwise. Any such provision existing on July 1, 1991, shall be valid to the extent it does not provide for broader indemnification than is allowed under this part.

(b) Any provision pursuant to subsection (a) of this Code section shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors, members, shareholders, partners, or, in the case of limited liability companies, members or managers of a predecessor of the corporation or other entity in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by paragraph (3) of [Code Section 14-3-1105](#).

(c) A corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this part.

(d) This part does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with his or her appearance as a witness in a proceeding at a time when he or she is not a party.

(e) Except as expressly provided in [Code Section 14-3-856](#), this part does not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

(f) The provisions of this part may be incorporated by reference into a corporation's articles of incorporation, bylaws, or a resolution of its members or board of directors. In such case, any such provision shall subsequently be deemed amended to conform with any amendments to this part, unless such provision otherwise expressly

provides.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1992, p. 6, § 14; Laws 1997, p. 1165, § 14; [Laws 2004, Act 533, § 45, eff. July 1, 2004.](#)

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▣ [Part 6](#). Conflicting Interest Transactions

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▢ [Part 6. Conflicting Interest Transactions \(Refs & Annos\)](#)

→ **§ 14-3-860. Definitions**

As used in this part, the term:

(1) “Conflicting interest” with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation (or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest) if:

(A) Whether or not the transaction is brought before the board of directors of the corporation for action, to the knowledge of the director at the time of commitment the director or a related person is a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the director or a related person that it would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction; or

(B) The transaction is brought (or is of such character and significance to the corporation that it would in the normal course be brought) before the board of directors of the corporation for action, and to the knowledge of the director at the time of commitment any of the following persons is either a party to the transaction or has a beneficial financial interest so closely linked to the transaction and of such financial significance to that person that it would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction: (i) an entity (other than the corporation) of which the director is a director, general partner, agent, or employee; (ii) a person that controls one or more of the entities specified in division (i) of this subparagraph or an entity that is controlled by, or is under common control with, one or more of the entities specified in division (i) of this subparagraph; or (iii) an individual who is a general partner, principal, or employer of the director.

(2) “Director's conflicting interest transaction” with respect to a corporation means a transaction effected or proposed to be effected by the corporation (or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest) respecting which a director of the corporation has a conflicting interest.

(3) “Related person” of a director means:

(A) The spouse (or a parent or sibling thereof) of the director or a child, grandchild, sibling, parent (or spouse of any thereof), or an individual having the same home as the director, or a trust or estate of which an individual specified in this subparagraph is a substantial beneficiary; or

(B) A trust, estate, incompetent, conservatee, or minor of which the director is a fiduciary.

(4) “Required disclosure” means disclosure by the director who has a conflicting interest of (A) the existence and nature of the director's conflicting interest, and (B) all facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment as to whether or not to proceed with the transaction.

(5) “Time of commitment” respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation (or its subsidiary or the entity in which it has a controlling interest) becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage.

CREDIT(S)

Laws 1991, p. 465, § 1.

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▣ [Part 6. Conflicting Interest Transactions \(Refs & Annos\)](#)

→ **§ 14-3-861. Judicial action**

(a) A transaction effected or proposed to be effected by a corporation (or by a subsidiary of the corporation or by any other entity in which the corporation has a controlling interest) that is not a director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in an action under the laws of this state by a member or by or in the right of the corporation or any other person who otherwise has standing, on the ground of an interest in the transaction of a director or any person with whom or which he or she has a personal, economic, or other association.

(b) A director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in an action under the laws of this state by a member or by or in the right of the corporation or any other person who otherwise has standing, on the ground of an interest in the transaction of the director or any person with whom or which he or she has a personal, economic, or other association, if:

(1) Directors' action respecting the transaction was at any time taken in compliance with [Code Section 14-3-862](#);

(2) Members' action respecting the transaction was at any time taken in compliance with [Code Section 14-3-863](#);

(3) Action by the superior court respecting the transaction was at any time taken in compliance with [Code Section 14-3-864](#); or

(4) The transaction, judged in the circumstances at the time of commitment, is established to have been fair to the corporation.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 66\(6\)](#), eff. July 1, 2004.

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▣ [Part 6. Conflicting Interest Transactions \(Refs & Annos\)](#)

→ **§ 14-3-862. Directors' action**

(a) Directors' action respecting a transaction is effective for purposes of paragraph (1) of subsection (b) of [Code Section 14-3-861](#) if the transaction received the affirmative vote of a majority (but not less than two) of those qualified directors on the board of directors or on a duly empowered committee thereof who voted on the transaction after either required disclosure to them (to the extent the information was not known by them) or compliance with subsection (b) of this Code section.

(b) If a director has a conflicting interest respecting a transaction, but neither he or she nor a related person of the director specified in subparagraph (A) of paragraph (3) of [Code Section 14-3-860](#) is a party thereto, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting information relating to the transaction such that the director cannot, consistent with that duty, make the disclosure contemplated by subparagraph (B) of paragraph (4) of [Code Section 14-3-860](#), then disclosure is sufficient for purposes of subsection (a) of this Code section if the director:

(1) Discloses to the directors voting on the transaction the existence and nature of his or her conflicting interest and informs them of the character of and limitations imposed by that duty prior to their vote on the transaction; and

(2) Plays no part, directly or indirectly, in their deliberations or vote.

(c) A majority (but not less than two) of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this Code section. Directors' action that otherwise complies with this Code section is not affected by the presence or vote of a director who is not a qualified director.

(d) For purposes of this Code section, “qualified director” means, with respect to a director's conflicting interest transaction, any director who does not have either (1) a conflicting interest respecting the transaction or (2) a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 66\(7\), 68\(8\), eff. July 1, 2004.](#)

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→ **§ 14-3-863. Members' action**

- (a) Members' action respecting a transaction is effective for purposes of paragraph (2) of subsection (b) of [Code Section 14-3-861](#) if a majority of the votes entitled to be cast by all qualified members were cast in favor of the transaction after (1) notice to members describing the director's conflicting interest transaction, (2) provision of the information referred to in subsection (d) of this Code section, and (3) required disclosure to the members who voted on the transaction (to the extent the information was not known by them).
- (b) For purposes of this Code section, “qualified members” means any members entitled to vote with respect to a director's conflicting interest transaction except the director and members that, to the knowledge, before the vote, of the secretary (or other officer or agent of the corporation authorized to tabulate votes) are a related person of the director.
- (c) A majority of the votes entitled to be cast by all qualified members constitutes a quorum for purposes of action that complies with this Code section. Subject to the provisions of subsection (d) of this Code section, members' action that otherwise complies with this Code section is not affected by the presence of, or the voting by, members that are not qualified members.
- (d) For purposes of compliance with subsection (a) of this Code section, a director who has a conflicting interest respecting the transaction shall, before the members' vote, inform the secretary (or other officer or agent of the corporation authorized to tabulate votes) of the identity of all members that to the knowledge of the director are related persons of the director.
- (e) If a members' vote does not comply with subsection (a) of this Code section solely because of a failure of a director to comply with subsection (d) of this Code section, and if the director establishes that this failure did not determine and was not intended by him or her to influence the outcome of the vote, the court may, with or without further proceedings respecting paragraph (3) of subsection (b) of [Code Section 14-3-861](#), take such action respecting the transaction and the director, and give such effect, if any, to the members' vote, as it considers appropriate in the circumstances.

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Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 67\(4\)](#), eff. July 1, 2004.

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→ **§ 14-3-864. Certain transactions effective without directors' or members' action**

In a case involving a corporation described in paragraph (2) of subsection (a) of [Code Section 14-3-1302](#), a transaction that was not the subject of either directors' action under [Code Section 14-3-862](#) or members' action under [Code Section 14-3-863](#) is effective for purposes of paragraph (3) subsection (b) of [Code Section 14-3-861](#) if the transaction is approved by the superior court, in an action in which the Attorney General is joined as a party.

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Laws 1991, p. 465, § 1.

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▢ [Part 6. Conflicting Interest Transactions \(Refs & Annos\)](#)

→ **§ 14-3-865. Officers' conflicting interest transactions**

(a) As used in this Code section, the term:

(1) “Officer” means a person who is not a director and who is holding an office described in the bylaws of the corporation or appointed by the board of directors in accordance with the bylaws of the corporation.

(2) “Officer's conflicting interest transaction” means any transaction, other than a director's conflicting interest transaction as defined in paragraph (2) of [Code Section 14-3-860](#), between a corporation (or a subsidiary of the corporation or any other entity in which the corporation has a controlling interest) and one or more of its officers or between a corporation and a related person of an officer.

(3) “Related person” of an officer shall have the same meaning with respect to an officer that this term has with respect to a director in paragraph (3) of [Code Section 14-3-860](#).

(4) “Required disclosure” with respect to an officer shall have the same meaning as this term has with respect to a director in paragraph (4) of [Code Section 14-3-860](#).

(5) “Time of commitment” shall have the same meaning as in paragraph (5) of [Code Section 14-3-860](#).

(b) No officer's conflicting interest transaction shall be void or voidable solely because the officer is present at or participates in the meeting of the board of directors or committee thereof which authorizes the contract or transaction.

(c) An officer's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in an action by a member or by or in the right of the corporation, on the ground of an interest in the transaction of the officer or any person with whom or which he or she has a personal, economic, or other association, if:

(1) The transaction was approved by the board of directors after required disclosure;

- (2) The transaction was approved by the members after required disclosure;
- (3) The action was approved by the superior court in an action to which the Attorney General was a party; or
- (4) The transaction, judged in the circumstances at the time of commitment, is established to have been fair to the corporation.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 66\(8\)](#), eff. July 1, 2004.

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→ **§ 14-3-1001. Authority to amend**

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

CREDIT(S)

Laws 1991, p. 465, § 1.

Current through the 2009 Regular Session.

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→ **§ 14-3-1002. Amendment by incorporators or board of directors**

If a corporation has no members or no members entitled to vote thereon, its incorporators until directors have been chosen and thereafter its board of directors may adopt one or more amendments to the corporation's articles subject to any approval required pursuant to [Code Sections 14-3-1030](#) and [14-3-1041](#).

CREDIT(S)

Laws 1991, p. 465, § 1.

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▢ [Part 1](#). Amendment of Articles of Incorporation

→ **§ 14-3-1003. Amendment by board of directors or members**

If the articles or bylaws require a vote of the members:

(1) Unless the articles provide otherwise, a corporation's board of directors may adopt one or more of the following amendments to the corporation's articles without member action:

(A) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(B) To delete the names and addresses of the initial directors;

(C) To delete the name and address of the initial registered agent or registered office, if an annual registration is on file with the Secretary of State;

(D) To change the corporate name; or

(E) To make any other change expressly permitted by this chapter to be made without member action;

(2) If there are members required to vote thereon, to adopt an amendment to a corporation's articles:

(A) The board of directors must recommend the amendment to the members unless the board of directors elects, because of a conflict of interest or other special circumstances, to make no recommendation and communicates the basis for its election to the members with the amendment;

(B) Unless this chapter, the articles, the bylaws, the members (acting pursuant to paragraph (3) of this Code section), or the board of directors (acting pursuant to paragraph (4) of this Code section) require a greater vote or voting by class, the members entitled to vote on the amendment must approve the amendment by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(C) Any person or persons whose approval is required by a provision of the articles or bylaws authorized by [Code Section 14-3-1030](#) or [14-3-1041](#) must approve the amendment in writing;

(3) The members may condition the amendment's adoption on any basis;

(4) The board may condition its submission of the proposed amendment on any basis;

(5) The corporation shall give notice to its members of the proposed membership meeting in writing in accordance with [Code Section 14-3-705](#). The notice must state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment; and

(6) If the amendment is submitted to the members for approval by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

CREDIT(S)

Laws 1991, p. 465, § 1.

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▣ [Part 1](#). Amendment of Articles of Incorporation

→ **§ 14-3-1004. Voting on amendments by classes of members**

If the articles or bylaws provide for voting by classes of members, then unless the articles or bylaws provide otherwise:

(1) The members of a class are entitled to vote as a class on a proposed amendment to the articles if the amendment would change the rights of that class as to voting in a different manner than such amendment would affect another class or members of another class;

(2) If a class is to be divided into two or more classes as a result of an amendment to the articles, the amendment must be approved by the members of each class that would be created by the amendment; and

(3) If a class vote is required to approve an amendment to the articles, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

CREDIT(S)

Laws 1991, p. 465, § 1.

Current through the 2009 Regular Session.

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▣ [Part 1](#). Amendment of Articles of Incorporation

→ **§ 14-3-1005. Articles of amendment**

A corporation amending its articles shall deliver to the Secretary of State for filing articles of amendment setting forth:

- (1) The name of the corporation;
- (2) The text of each amendment adopted;
- (3) The date of each amendment's adoption;
- (4) If approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors or incorporators;
- (5) If approval by members was required, a statement that the amendment was duly approved by the members in accordance with the provisions of [Code Section 14-3-1003](#); and
- (6) If approval of the amendment by some person or persons other than the members, the board, or the incorporators is required pursuant to [Code Section 14-3-1030](#) or [14-3-1041](#), a statement that the approval was obtained.

CREDIT(S)

Laws 1991, p. 465, § 1.

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▣ [Part 1](#). Amendment of Articles of Incorporation

→ **§ 14-3-1005.1. Notice of intent to change corporate name**

(a) Together with the articles of amendment which change the name of the corporation, the corporation shall deliver to the Secretary of State an undertaking, which may appear in the articles of amendment or be set forth in a letter or other instrument executed by an incorporator or any person authorized to act on behalf of the corporation, to publish a notice of the filing of the articles of amendment as required by subsection (b) of this Code section.

(b) No later than the next business day following the delivery of the articles of amendment and certificate as provided in subsection (a) of this Code section, the corporation shall mail or deliver to the publisher of a newspaper which is the official organ of the county where the registered office of the corporation is located or which is the newspaper of general circulation published within such county whose most recently published annual statement of ownership and circulation reflects a minimum of 60 percent paid circulation a request to publish a notice in substantially the following form:

--“NOTICE OF CHANGE OF CORPORATE NAME--

Notice is given that articles of amendment which will change the name of \_\_\_\_\_ (present corporate name) to \_\_\_\_\_ (proposed corporate name) have been delivered to the Secretary of State for filing in accordance with the Georgia Nonprofit Corporation Code. The registered office of the corporation is located at \_\_\_\_\_ (address of registered office).”

The request for publication of the notice shall be accompanied by a check, draft, or money order in the amount of \$ 40.00 in payment for the cost of publication. The notice shall be published once a week for two consecutive weeks commencing within ten days after receipt of the notice by the newspaper. Failure on the part of the corporation to mail or deliver the notice or payment therefor or failure on the part of the newspaper to publish the notice in compliance with this subsection shall not invalidate the articles of amendment or the change of the name of the corporation.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1999, p. 405, § 20.

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→ **§ 14-3-1006. Restated articles of incorporation**

- (a) A corporation's board of directors may restate its articles of incorporation at any time with or without approval by members or any other person.
- (b) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring approval by the members or any other person, it must be adopted as provided in [Code Section 14-3-1003](#), [14-3-1030](#), or [14-3-1041](#).
- (c) If the board seeks to have the restatement approved by the members at a membership meeting, the corporation shall notify each of its members of the proposed membership meeting in writing in accordance with [Code Section 14-3-705](#). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendments or other change it would make in the articles or contain or be accompanied by a full and complete summary of any such amendment or other change.
- (d) If the board seeks to have the restatement approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy of the restatement that identifies any amendments or other change it would make in the articles or contain or be accompanied by a full and complete summary of any such amendment or other change.
- (e) A corporation restating its articles of incorporation shall deliver to the Secretary of State for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation, including or accompanied by a certificate setting forth the following information:
- (1) Whether the restatement contains an amendment to the articles requiring approval by the members or any other person other than the board of directors and, if it does not, that the board of directors adopted the restatement; or
  - (2) If the restatement contains an amendment to the articles requiring approval by the members, the information required by [Code Section 14-3-1005](#); and

(3) If the restatement contains an amendment to the articles requiring approval by a person whose approval is required pursuant to [Code Sections 14-3-1030](#) and [14-3-1041](#), a statement that such approval was obtained.

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

(g) The Secretary of State may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including any certificate filed pursuant to subsection (e) of this Code section.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 46, eff. July 1, 2004](#).

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▢ [Part 1](#). Amendment of Articles of Incorporation

→ **§ 14-3-1007. Amendment pursuant to reorganization**

(a) A corporation's articles may be amended without board approval or approval by the members or approval required pursuant to [Code Section 14-3-1030](#) or [14-3-1041](#) to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles after amendment contain only provisions required or permitted by [Code Section 14-3-202](#).

(b) The individual or individuals designated by the court shall deliver to the Secretary of State articles of amendment setting forth:

- (1) The name of the corporation;
- (2) The text of each amendment approved by the court;
- (3) The date of the court's order or decree approving the articles of amendment;
- (4) The title of the reorganization proceeding in which the order or decree was entered; and
- (5) A statement that the court had jurisdiction of the proceeding under federal statute.

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

CREDIT(S)

Laws 1991, p. 465, § 1.

Current through the 2009 Regular Session.

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▣ [Part 1](#). Amendment of Articles of Incorporation

→ **§ 14-3-1008. Effect of amendment**

An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, any requirement or limitation imposed upon the corporation or any property held by it by virtue of any trust upon which such property is held by the corporation, or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

CREDIT(S)

Laws 1991, p. 465, § 1.

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▣ [Part 2](#). Amendment of Bylaws

→ **§ 14-3-1020. Amendment by incorporators or board of directors**

If a corporation has no members or no members entitled to vote thereon, its incorporators until the organizational meeting of directors and thereafter its board of directors may adopt one or more amendments to the corporation's bylaws subject to any approval required pursuant to [Code Sections 14-3-1030](#) and [14-3-1041](#).

CREDIT(S)

Laws 1991, p. 465, § 1.

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▢ [Part 2](#). Amendment of Bylaws

→ **§ 14-3-1021. Amendment by board of directors or members**

(a) To adopt an amendment to a corporation's bylaws if there are members required to vote thereon:

(1) The board of directors must recommend the amendment to the members unless the board of directors elects, because of a conflict of interest or other special circumstances, to make no recommendation and communicates the basis for its election to the members with the amendment;

(2) Unless this chapter, the articles, the bylaws, the members (acting pursuant to subsection (b) of this Code section), or the board of directors (acting pursuant to subsection (c) of this Code section) require a greater vote or voting by class, the members entitled to vote on the amendment must approve the amendment by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(3) Any person or persons whose approval is required by a provision of the articles or bylaws authorized by [Code Section 14-3-1030](#) or [14-3-1041](#) must approve the amendment in writing.

(b) The members may condition the amendment's adoption on any basis.

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

(d) The corporation shall give notice to its members of the proposed membership meeting in writing in accordance with [Code Section 14-3-705](#). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) If the amendment is submitted to the members for approval by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

CREDIT(S)

Laws 1991, p. 465, § 1.

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▣ [Part 2](#). Amendment of Bylaws

→ **§ 14-3-1022. Voting on amendments by classes of members**

If the articles or bylaws provide for voting by classes of members, then unless the articles or bylaws provide otherwise:

- (1) The members of a class are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would change the rights of that class as to voting in a different manner than such amendment would affect another class or members of another class;
- (2) If a class is to be divided into two or more classes as a result of an amendment to the bylaws, the amendment must be approved by the members of each class that would be created by the amendment; and
- (3) If a class vote is required to approve an amendment to the bylaws, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1992, p. 6, § 14.

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▣ [Part 3](#). Approval of Amendments

→ **§ 14-3-1030. Amendment where required to be approved in writing by specified person**

The articles or the bylaws may require an amendment to the articles or bylaws to be approved in writing by a specified person or persons other than the board. Such an article or bylaw provision may only be amended with the approval in writing of such person or persons.

CREDIT(S)

Laws 1991, p. 465, § 1.

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▣ [Part 4](#). Amendment to Operate for Profit

→ **§ 14-3-1040. Amendment to provide that corporation shall operate as business corporation**

A corporation organized under this chapter may amend its articles of incorporation to provide that the corporation shall operate as a for profit business corporation.

CREDIT(S)

Laws 1991, p. 465, § 1.

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▣ [Part 4](#). Amendment to Operate for Profit

→ **§ 14-3-1041. Procedure for amendment**

(a) A corporation described in paragraph (2) of subsection (a) of [Code Section 14-3-1302](#) may amend its articles of incorporation as provided in [Code Section 14-3-1040](#) only:

(1) Upon the prior approval of the superior court in a proceeding in which the Attorney General has been given notice; or

(2) If on or before the effective date of the amendment:

(A) Assets with a value equal to the greater of the fair market value of the net tangible and intangible assets (including good will) of the corporation, or the fair market value of the corporation if it were to be operated as a business concern, are transferred or conveyed to one or more persons who would have received its assets under subsection (b) of [Code Section 14-3-1403](#) had it dissolved;

(B) It shall return, transfer, or convey any assets held by it upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the amendment, in accordance with such condition; and

(C) The amendment is approved by a majority of the directors of the corporation who are not and will not become shareholders in, or officers, employees, agents, or consultants of the corporation following the effective date of the amendment.

(b) At least 30 days before the filing of any amendment described in [Code Section 14-3-1040](#) by a corporation described in subsection (a) of this Code section, notice of the proposed amendment shall be delivered to the Attorney General.

(c) Without the prior written consent of the superior court in a proceeding of which the Attorney General has been given notice, no member of a corporation described in subsection (a) of this Code section may receive or keep anything as a result of an amendment described in [Code Section 14-3-1040](#). The court shall approve the transaction if it is in the public interest.



CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1993, p. 91, § 14.

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▣ [Part 4](#). Amendment to Operate for Profit

➔ **§ 14-3-1042. Corporation to be governed by “Georgia Business Corporation Code” after amendment**

From and after the effective date of any amendment described in [Code Section 14-3-1040](#), the corporation shall be subject to and governed by the provisions of Chapter 2 of this title, the “Georgia Business Corporation Code.”

CREDIT(S)

Laws 1991, p. 465, § 1.

Current through the 2009 Regular Session.

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Title 14. Corporations, Partnerships, and Associations

▢ [Chapter 3. Nonprofit Corporations \(Refs & Annos\)](#)

▢ [Article 11. Merger](#)

→ **§ 14-3-1101. Plan of merger**

(a) Subject to the limitations set forth in [Code Section 14-3-1102](#), one or more corporations may merge into another corporation if the plan of merger is approved as provided in [Code Section 14-3-1103](#).

(b) The plan of merger must set forth:

(1) The name of each corporation planning to merge and the name of the surviving corporation into which each plans to merge;

(2) The terms and conditions of the planned merger; and

(3) The manner and basis, if any, of converting the memberships of each corporation into obligations, memberships, or other securities of the surviving or any other corporation or into cash or other property in whole or in part.

(c) The plan of merger may set forth:

(1) Amendments to the articles of incorporation of the surviving corporation; and

(2) Other provisions relating to the merger.

(d) Any of the terms of the plan of merger may be made dependent upon facts ascertainable outside of the plan of merger, provided that the manner in which such facts shall operate upon the terms of the merger is clearly and expressly set forth in the plan of merger. As used in this subsection, the term “facts” includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1997, p. 1165, § 15; Laws 1998, p. 128, § 14; [Laws 2004, Act 533, § 47, eff. July](#)

1, 2004.

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▢ [Chapter 3. Nonprofit Corporations \(Refs & Annos\)](#)

▢ [Article 11. Merger](#)

→ **§ 14-3-1102. Procedure for merger**

(a) Without the prior approval of the superior court in a proceeding of which the Attorney General has been given written notice, a corporation described in paragraph (2) of subsection (a) of [Code Section 14-3-1302](#) may merge with a corporation or foreign corporation or other entity, provided that:

(1) The corporation or entity which is the surviving corporation or entity is a corporation or entity described in paragraph (2) of subsection (a) in [Code Section 14-3-1302](#) after the merger; or

(2)(A) On or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets including good will of the corporation or the fair market value of the corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under subsection (b) of [Code Section 14-3-1403](#) had it dissolved;

(B) It shall return, transfer, or convey any assets held by it upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and

(C) The merger is approved by a majority of directors of the corporation who are not and will not become members or shareholders in or officers, employees, agents, or consultants of the surviving corporation or entity.

(b) At least 30 days before consummation of any merger of a corporation pursuant to paragraph (2) of subsection (a) of this Code section, notice, including a copy of the proposed plan of merger, must be delivered to the Attorney General.

(c) Without the prior approval of the superior court in a proceeding in which the Attorney General has been given notice, no member of a corporation described in paragraph (2) of subsection (a) of [Code Section 14-3-1302](#) may receive or keep anything as a result of a merger other than membership in the surviving corporation or entity. The court shall approve the transaction if it is in the public interest.

(d) For purposes of this Code section, the definitions contained in [Code Section 14-3-1108](#) shall be applicable.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1997, p. 1165, § 16; [Laws 2004, Act 533, § 48, eff. July 1, 2004](#).

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▣ [Chapter 3. Nonprofit Corporations \(Refs & Annos\)](#)

▣ [Article 11. Merger](#)

→ **§ 14-3-1103. Action on plan**

(a) Unless this chapter, the articles, the bylaws, or the board of directors or members acting pursuant to subsection (c) of this Code section require a greater vote or voting by class, a plan of merger to be authorized must be approved:

(1) By the board;

(2) By the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(3) In writing by any person or persons whose approval is required by a provision of the articles authorized by [Code Section 14-3-1030](#) for an amendment to the articles or bylaws.

(b) If the corporation does not have members, the merger must be approved by a majority of the directors in office at the time the merger is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with subsection (b) of [Code Section 14-3-822](#). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.

(c) The board may condition its submission of the proposed merger, and the members may condition their approval of the merger, on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with [Code Section 14-3-705](#). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(e) If the board seeks to have the plan approved by the members by consent or ballot in writing or electronic transmission, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(f) Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under [Code Section 14-3-1004](#) or [14-3-1022](#). The plan is approved by a class of members by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(g) After a merger is adopted, and at any time before articles of merger are filed, the planned merger may be abandoned (subject to any contractual rights) without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 49, eff. July 1, 2004](#).

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▢ [Article 11. Merger](#)

→ **§ 14-3-1104. Articles of merger**

(a) After a plan of merger is approved by the board of directors, and, if required by [Code Section 14-3-1103](#), by the members and any other persons, the surviving corporation or entity shall deliver to the Secretary of State for filing articles of merger setting forth:

(1) The plan of merger;

(2) If approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;

(3) If approval by members was required:

(A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and

(B) Either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class;

(4) If approval of the plan by some person or persons other than the members or the board is required pursuant to paragraph (3) of subsection (a) of [Code Section 14-3-1103](#), a statement that the approval was obtained; and

(5) If approval of the shareholders of one or more corporations or entities party to the merger was required, a statement that the merger was duly approved by the shareholders.

(b) In lieu of filing articles of merger that set forth the plan of merger, the surviving corporation or entity may deliver to the Secretary of State for filing a certificate of merger which sets forth:

(1) The name and state of incorporation of each corporation or entity which is merging and the name of the

surviving corporation or entity into which each other corporation or entity is merging;

(2) Any amendments to the articles of incorporation or governing agreements of the surviving corporation or entity;

(3) That the executed plan of merger is on file at the principal place of business of the surviving corporation or entity, stating the address thereof;

(4) That a copy of the plan of merger will be furnished by the surviving corporation or entity, on request and without cost, to any member or shareholder of any corporation or entity that is a party to the merger;

(5) If approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;

(6) If approval by members was required:

(A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and

(B) Either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class;

(7) If approval of the plan by some person or persons other than the members or the board is required pursuant to paragraph (3) of subsection (a) of [Code Section 14-3-1103](#), a statement that the approval was obtained; and

(8) If approval of the shareholders of one or more corporations or entities party to the merger was required, a statement that the merger was duly approved by the shareholders.

(c) Unless a delayed effective date is specified, a merger takes effect when the articles or certificate of merger is filed.

(d) For purposes of this Code section, the definitions contained in [Code Section 14-3-1108](#) shall be applicable.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1997, p. 1165, § 17; [Laws 2004, Act 533, § 50, eff. July 1, 2004](#).

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▢ [Article 11. Merger](#)

→ **§ 14-3-1104.1. Notice of merger; publication**

(a) Together with the articles or certificate of merger, the surviving corporation or entity shall deliver to the Secretary of State an undertaking which may appear in the articles or certificate of merger or be set forth in a letter or other instrument executed by an officer or any person authorized to act on behalf of such corporation or entity that the request for publication of a notice of filing the articles or certificate of merger and payment therefor will be made as required by subsection (b) of this Code section.

(b) No later than the next business day after filing the articles or certificate of merger, the surviving corporation or entity shall mail or deliver to the publisher of a newspaper which is the official organ of the county where the registered office of the surviving corporation or entity is to be located, if the surviving corporation or entity will be required to maintain a registered office in Georgia, or where the registered office of the merging corporation or entity was located prior to the merger in any other case, or which is a newspaper of general circulation published within such county whose most recently published annual statement of ownership and circulation reflects a minimum of 60 percent paid circulation a request to publish a notice in substantially the following form:

“NOTICE OF MERGER

Notice is given that articles or a certificate of merger which will effect a merger by and between (or among) \_\_\_\_\_ (name and state of incorporation or organization of each constituent corporation or entity) will be delivered to the Secretary of State for filing in accordance with the Georgia Nonprofit Corporation Code. The name of the surviving corporation (or other entity) in the merger will be \_\_\_\_\_, a corporation (or other entity) incorporated (organized pursuant to the laws of) in the State of \_\_\_\_\_. The registered office of such corporation (name of type of entity) (is) (will be) located at \_\_\_\_\_ (address of registered office) and its registered (agent) (agents) at such address (is) (are) \_\_\_\_\_ (name or names of agent or agents).”

The request for publication of the notice shall be accompanied by a check, draft, or money order in the amount of \$40.00 in payment of the cost of publication. The notice shall be published once a week for two consecutive weeks commencing within ten days after receipt of the notice by the newspaper. Failure on the part of the surviving corporation or entity to mail or deliver the notice or payment therefor or failure on the part of the newspaper to publish the notice in compliance with this subsection shall not invalidate the merger.

(c) For purposes of this Code section, the definitions contained in [Code Section 14-3-1108](#) shall be applicable.

CREDIT(S)

[Laws 2004, Act 533, § 51, eff. July 1, 2004.](#)

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→ **§ 14-3-1105. Effect of merger**

(a) When a merger governed by this chapter takes effect:

(1) Every other corporation or entity party to the merger merges into the surviving corporation or entity and the separate existence of every corporation except the surviving corporation or entity ceases;

(2) The title to all real estate and other property owned by, and every contract right possessed by, each corporation or entity party to the merger is vested in the surviving corporation or entity without reversion or impairment, without further act or deed, and without any conveyance, transfer, or assignment having occurred, subject to any and all conditions to which the property was subject prior to the merger;

(3) The surviving corporation or entity has all liabilities and obligations of each corporation or entity party to the merger;

(4) A proceeding pending against any corporation or entity party to the merger may be continued as if the merger did not occur or the surviving corporation or entity may be substituted in the proceeding for the corporation or entity whose existence ceased; and

(5) The articles of incorporation and bylaws or governing agreements of the surviving corporation or entity are amended to the extent provided in the plan of merger.

(b) For purposes of this Code section, the definitions contained in [Code Section 14-3-1108](#) shall be applicable.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1997, p. 1165, § 18; [Laws 2004, Act 533, § 52, eff. July 1, 2004](#).

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▢ [Article 11. Merger](#)

→ **§ 14-3-1106. Merger with foreign corporation**

(a) Except as provided in [Code Section 14-3-1102](#), one or more foreign corporations or foreign business corporations may merge with one or more corporations if:

(1) The merger is permitted by the law of the state or country under whose law each foreign corporation or foreign business corporation is incorporated and each foreign corporation or foreign business corporation complies with that law in effecting the merger;

(2) The foreign corporation or foreign business corporation complies with [Code Sections 14-3-1104](#) and [14-3-1104.1](#) if it is the surviving corporation of the merger; and

(3) Each corporation complies with the applicable provisions of [Code Sections 14-3-1101](#) through [14-3-1103](#) and, if it is the surviving corporation of the merger, with [Code Sections 14-3-1104](#) and [14-3-1104.1](#).

(b) Upon the merger taking effect, the surviving foreign corporation or foreign business corporation, if it does not have a registered agent in this state, shall be deemed to have appointed the Secretary of State as its registered agent for service of process in a proceeding to enforce any obligation of a domestic corporation party to the merger, until such time as it appoints a registered agent in this state.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 52, eff. July 1, 2004](#).

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➔ **§ 14-3-1107. Bequests, etc., inure to surviving corporation**

Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, that is made to a constituent corporation or entity and that takes effect or remains payable after the merger, inures to the surviving corporation or entity unless the will or other instrument otherwise specifically provides.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 52, eff. July 1, 2004](#).

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→ **§ 14-3-1108. Plan of merger; definitions**

(a) As used in this Code section and in [Code Section 14-3-1107](#), the term:

(1) “Entity” includes any business corporation or foreign business corporation, domestic or foreign limited liability company, domestic or foreign joint-stock association, or domestic or foreign limited partnership.

(2) “Governing agreements” includes the articles of incorporation and bylaws of a business corporation, foreign business corporation, corporation or foreign corporation, articles of association or trust agreement or indenture and bylaws of a joint-stock association, articles of organization and operating agreement of a limited liability company, and the certificate of limited partnership and limited partnership agreement of a limited partnership, and agreements serving comparable purposes under the laws of other states or jurisdictions.

(3) “Joint-stock association” includes any association of the kind commonly known as a joint-stock association or joint-stock company and any unincorporated association, trust, or enterprise having members or having outstanding shares of stock or other evidences of financial and beneficial interest therein, whether formed by agreement or under statutory authority or otherwise but does not include a corporation, partnership, limited liability partnership, limited liability company, or nonprofit organization. A joint-stock association as defined in this paragraph may be one formed under the laws of this state, including a trust created pursuant to Article 3 of Chapter 12 of Title 53, or one formed under or pursuant to the laws of any other state or jurisdiction.

(4) “Limited liability company” includes limited liability companies formed under the laws of this state or of any other state or territory or the District of Columbia, unless the laws of such other state or jurisdiction forbid the merger of a limited liability company with a corporation.

(5) “Limited partnership” includes limited partnerships formed under the laws of this state or of any other state or territory or the District of Columbia, unless the laws of such other state or jurisdiction forbid the merger of a limited partnership with a corporation.

(6) “Share” includes shares, memberships, financial or beneficial interests, units, or proprietary or partnership interests in a business corporation or a foreign business corporation, limited liability company, joint-stock association, or a limited partnership but does not include debt obligations of any entity.

(7) “Shareholder” includes every member of a limited liability company or a joint-stock association that is a party to a merger or holder of a share or other evidence of financial or beneficial interest therein.

(b) Subject to the limitations set forth in [Code Section 14-3-1102](#), one or more corporations may merge with one or more entities, except an entity formed under the laws of a state or jurisdiction which forbids a merger with a corporation. The corporation or corporations and one or more entities may merge into a single corporation or other entity, which may be any one of the constituent corporations or entities.

(c) The board of directors of each merging corporation and the appropriate body of each entity, in accordance with its governing agreements and the laws of the state or jurisdiction under which it was formed, shall adopt a plan of merger in accordance with each corporation's and entity's governing agreements and the laws of the state or jurisdiction under which it was formed, as the case may be.

(d) The plan of merger:

(1) Must set forth:

(A) The name of each corporation and entity planning to merge and the name of the surviving corporation or entity into which each other corporation and entity plans to merge;

(B) The terms and conditions of the merger; and

(C) The manner and basis of converting the shares of each corporation and the shares, memberships, or financial or beneficial interests or units in each of the entities into shares, obligations, or other securities of the surviving or any other corporation or entity or into cash or other property in whole or in part; and

(2) May set forth:

(A) Amendments to the articles of incorporation or governing agreements of the surviving corporation or entity; and

(B) Other provisions relating to the merger.

(e) Any of the terms of the plan of merger may be made dependent upon facts ascertainable outside of the plan of merger, provided that the manner in which such facts shall operate upon the terms of the merger is clearly and expressly set forth in the plan of merger. As used in this subsection, the term “facts” includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

(f) In the case of any entity, the plan of merger shall be approved in the manner required by its governing agreements and in compliance with any applicable laws of the state or jurisdiction under which it was formed. In addition, each of the corporations shall comply with all other provisions of this chapter which relate to the merger of corporation. Each other entity shall comply with all other provisions of its governing agreements and all provisions of the laws, if any, of the state or jurisdiction in which it was formed which relate to the merger.

(g) Each merging corporation shall comply with the requirements of [Code Section 14-3-1104](#).

CREDIT(S)

[Laws 2004, Act 533, § 53, eff. July 1, 2004; Laws 2005, Act 19, § 14, eff. April 7, 2005.](#)

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▣ [Article 12. Sale, Encumbrance, or Other Disposition of Assets](#)

→ **§ 14-3-1201. Sale of assets not requiring member approval**

Unless otherwise provided by this chapter, the articles, or bylaws, a corporation may on the terms and conditions, for the consideration determined by the board of directors, and without the approval of the members or any other person:

(1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of its activities; or

(2) Mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of its property whether or not in the usual and regular course of its activities.

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Laws 1991, p. 465, § 1.

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▢ [Article 12. Sale, Encumbrance, or Other Disposition of Assets](#)

➔ **§ 14-3-1202. Sale of assets requiring member approval**

(a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property (with or without the good will) other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the corporation's board if the proposed transaction is authorized by subsection (b) of this Code section.

(b) Unless this chapter, the articles, the bylaws, or the board of directors or members (acting pursuant to subsection (d) of this Code section) require a greater vote or voting by class, the proposed transaction to be authorized must be approved:

(1) By the board;

(2) By the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(3) In writing by any person or persons whose approval is required by a provision of the articles authorized by [Code Section 14-3-1030](#) for an amendment to the articles or bylaws.

(c) If the corporation does not have members, the transaction must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with subsection (b) of [Code Section 14-3-822](#). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(d) The board may condition its submission of the proposed transaction, and the members may condition their approval of the transaction, on receipt of a higher percentage of affirmative votes or on any other basis.

(e) If the corporation seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with [Code Section 14-3-705](#). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation

and contain or be accompanied by a copy or summary of a description of the transaction.

(f) If the board needs to have the transaction approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of a description of the transaction.

(g) A corporation described in paragraph (2) of subsection (a) of [Code Section 14-3-1302](#) must give written notice to the Attorney General 30 days before it sells, leases, exchanges, or otherwise disposes of all, or substantially all, of its property if the transaction is not in the usual and regular course of its activities, unless said transaction is with another corporation described in paragraph (2) of subsection (a) of [Code Section 14-3-1302](#).

(h) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further action by the members or any other person who approved the transaction in accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors.

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Laws 1991, p. 465, § 1.

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▣ [Article 13. Distributions](#)

→ **§ 14-3-1301. Limitation on distributions**

Except as provided in [Code Section 14-3-1302](#) and Article 14 of this chapter, a corporation shall not make any distributions.

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Laws 1991, p. 465, § 1.

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▢ [Article 13. Distributions](#)

→ **§ 14-3-1302. To whom distributions may be made; repurchase of membership**

(a) A corporation may make distributions to the following:

(1) Organizations whether or not incorporated that are organized and operated for the same or similar purposes as the distributing corporation;

(2) Organizations whether or not incorporated that are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international sports competition, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder, member, or individual; or

(3) A state or possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia.

(b) Except for corporations described in paragraph (2) of subsection (a) of this Code section, a corporation may repurchase a membership for the consideration that the member paid for his or her membership if, after the purchase is completed:

(1) The corporation would be able to pay its debts as they become due in the normal course of business; and

(2) The corporation's total assets would at least equal the sum of its liabilities.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 54, eff. July 1, 2004.](#)

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Chapter 3. Nonprofit Corporations ([Refs & Annos](#))

▣ [Article 14](#). Dissolution

▣ [Part 1](#). Voluntary Dissolution

→ **§ 14-3-1401. Dissolution by incorporators or initial directors**

A majority of the incorporators or initial directors of a corporation that has not admitted members entitled to vote on dissolution, has not commenced activities, and has no net assets may dissolve the corporation by delivering to the Secretary of State for filing articles of dissolution that set forth:

- (1) The name of the corporation;
- (2) The date of its incorporation;
- (3) That:
  - (A) The corporation has not admitted members entitled to vote on dissolution;
  - (B) The corporation has not commenced activities; and
  - (C) The corporation has no net assets;
- (4) That no debt of the corporation remains unpaid; and
- (5) That a majority of the incorporators or initial directors authorized the dissolution.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 55, eff. July 1, 2004](#); [Laws 2005, Act 19, § 14, eff. April 7, 2005](#).

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▢ [Article 14](#). Dissolution

▢ [Part 1](#). Voluntary Dissolution

→ **§ 14-3-1402. Dissolution by board of directors and members**

(a) A corporation's board of directors may propose dissolution for submission to the members, if there are members entitled to vote thereon as follows:

(1) For a proposal to dissolve to be adopted:

(A) The board of directors must recommend dissolution to the members unless the board of directors elects, because of a conflict of interest or other special circumstances, to make no recommendation and communicates the basis for its determination to the members; and

(B) The members entitled to vote must approve the proposal to dissolve as provided in paragraph (4) of this subsection;

(2) The board of directors may condition its submission of the proposal for dissolution on any basis;

(3) The corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with [Code Section 14-3-705](#). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation;

(4) Unless the articles of incorporation, the bylaws, or the board of directors acting pursuant to paragraph (2) of this subsection requires a greater vote or vote by classes, the proposal to dissolve to be adopted must be approved by a majority of all the votes entitled to be cast on that proposal; and

(5) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.

(b) Unless the articles of incorporation or bylaws requires a greater vote, if the corporation does not have members entitled to vote on dissolution, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors'

meeting at which such approval is to be obtained in accordance with [Code Section 14-3-822](#). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(c) The plan of dissolution shall conform to the requirements of [Code Section 14-3-1403](#) and shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 56, eff. July 1, 2004](#).

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→ **§ 14-3-1403. Plan of dissolution**

- (a) A plan of dissolution providing for the distribution of assets shall be adopted by a corporation in the process of dissolution.
- (b) The plan of dissolution shall provide for distribution of assets as follows:
- (1) All liabilities and obligations of the corporation shall be paid and discharged, or adequate provisions shall be made therefor;
  - (2) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements;
  - (3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, trusts, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation;
  - (4) Other assets, if any, shall be distributed in accordance with the articles of incorporation and bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others; and
  - (5) Any remaining assets may be distributed to such persons, trusts, societies, organizations, or domestic or foreign corporations as may be provided in the plan of dissolution.
- (c) A corporation described in paragraph (2) of subsection (a) of [Code Section 14-3-1302](#) shall comply with the following additional requirements:
- (1) It shall give the Attorney General written notice of its intent to dissolve at or before the time it delivers art-

icles of dissolution to the Secretary of State;

(2) It shall not transfer or convey any assets as part of the dissolution process until 30 days after it has given the written notice to the Attorney General required by paragraph (1) of this subsection; and

(3) When all or substantially all of the assets of the corporation have been transferred or conveyed, it shall deliver to the Attorney General a list showing those (other than creditors) to whom the assets were transferred or conveyed. The list shall indicate the address of each person (other than creditors) who received assets and indicate what assets each received.

CREDIT(S)

Laws 1991, p. 465, § 1.

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→ **§ 14-3-1404. Notice of intent to dissolve**

Upon approval of a proposal for dissolution pursuant to [Code Section 14-3-1402](#), the corporation shall begin dissolution by delivering to the Secretary of State for filing a notice of intent to dissolve setting forth:

- (1) The name of the corporation;
- (2) The date dissolution was authorized; and
- (3) If member approval was required for dissolution, a statement that dissolution was duly approved by the members in accordance with subsection (a) of [Code Section 14-3-1402](#).

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Laws 1991, p. 465, § 1.

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▢ [Article 14](#). Dissolution

▢ [Part 1](#). Voluntary Dissolution

→ **§ 14-3-1404.1. Publication of notice of intent to dissolve**

(a) Together with the notice of intent to dissolve provided for in [Code Section 14-3-1404](#), the corporation shall deliver to the Secretary of State a certificate executed by an officer or director of such corporation, or any person undertaking such request on behalf of the corporation, verifying that the request for publication of a notice of intent to voluntarily dissolve the corporation and payment therefor have been made as required by subsection (b) of this Code section.

(b) Prior to filing the notice of intent to dissolve provided for in [Code Section 14-3-1404](#), the corporation shall mail or deliver to the publisher of a newspaper which is the official organ of the county where the registered office of the corporation is located or which is a newspaper of general circulation published within such county whose most recently published annual statement of ownership and circulation reflects a minimum of 60 percent paid circulation a request to publish a notice in substantially the following form:

--“NOTICE OF INTENT TO VOLUNTARILY DISSOLVE A CORPORATION--

Notice is given that a notice of intent to dissolve \_\_\_\_\_ (name of corporation), a Georgia nonprofit corporation with its registered office at \_\_\_\_\_ (address of registered office), will be delivered to the Secretary of State for filing in accordance with the Georgia Nonprofit Corporation Code.”

The notice may also include the information specified in [Code Section 14-3-1408](#). The request for publication of the notice shall be accompanied by a check, draft, or money order in the amount of \$40.00 in payment of the cost of publication. The notice shall be published once a week for two consecutive weeks commencing within ten days after receipt of the notice by the newspaper. Failure on the part of the corporation to mail or deliver the notice or payment therefor or failure on the part of the newspaper to publish the notice in compliance with this subsection shall not invalidate the dissolution of the corporation.

CREDIT(S)

Laws 1991, p. 465, § 1.



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→ **§ 14-3-1405. Revocation of dissolution proceedings**

- (a) A corporation may revoke its dissolution proceedings at any time prior to the filing of articles of dissolution.
- (b) Revocation of dissolution proceedings must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action by the board of directors alone, in which event the board of directors may revoke the dissolution without member action.
- (c) After the revocation of dissolution proceedings is authorized, the corporation may revoke the dissolution proceedings by delivering to the Secretary of State for filing a notice of revocation of intent to dissolve, together with a copy of its notice of intent to dissolve, that sets forth:
- (1) The name of the corporation;
  - (2) The date that the revocation of dissolution proceedings was authorized;
  - (3) If the corporation's board of directors or incorporators revoked the dissolution proceedings, a statement to that effect;
  - (4) If the corporation's board of directors revoked the dissolution proceedings authorized by the members, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
  - (5) If member action was required to revoke the dissolution proceedings, the information required by paragraph (3) of [Code Section 14-3-1404](#).
- (d) Revocation of dissolution proceedings is effective when a notice of revocation of intent to dissolve is filed.
- (e) When the revocation of dissolution proceedings is effective, it relates back to and takes effect as of the effective date of the filing of the notice of intent to dissolve and the corporation resumes carrying on its business

as if dissolution proceedings had never occurred.

CREDIT(S)

Laws 1991, p. 465, § 1.

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→ **§ 14-3-1406. Effect of notice of intent to dissolve**

A corporation that has filed a notice of intent to dissolve continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

- (1) Collecting its assets;
- (2) Disposing of its properties that will not be distributed in kind in accordance with the plan of dissolution;
- (3) Discharging or making provision for discharging its liabilities;
- (4) Distributing its remaining property among its members in accordance with the plan of dissolution; and
- (5) Doing every other act necessary to wind up and liquidate its business and affairs.

CREDIT(S)

Laws 1991, p. 465, § 1.

Current through the 2009 Regular Session.

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→ **§ 14-3-1407. Known claims against corporation in dissolution**

(a) A corporation that has filed a notice of intent to dissolve may dispose of the known claims against it by following the procedure described in this Code section.

(b) The corporation in dissolution shall notify its known claimants in writing of the dissolution proceedings at any time after the filing of the notice of intent to dissolve. The written notice must:

(1) Describe information that must be included in a claim;

(2) Provide a mailing address where a claim may be sent;

(3) State the deadline, which may not be less than six months from the effective date of the written notice, by which the dissolved corporation must receive the claim;

(4) State that the claim will be barred if not received by the deadline; and

(5) State that the corporation will give notice of acceptance or rejection of all claims that are received in timely fashion within six months of the deadline for receipt of claims.

(c) A claim against a corporation in dissolution is barred:

(1) If a claimant who was given written notice under subsection (b) of this Code section does not deliver the claim to the dissolved corporation by the deadline; or

(2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within one year from the effective date of the rejection notice.

(d) For purposes of this Code section, the term “claim” does not include a contingent liability or a claim based on an event occurring after the filing of the notice of intent to dissolve.

CREDIT(S)

Laws 1991, p. 465, § 1.

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→ **§ 14-3-1408. Unknown claims against corporation in dissolution**

(a) A corporation that has filed a notice of intent to dissolve may include in the notice of its intent to dissolve published under [Code Section 14-3-1404.1](#) a request that persons with claims against the corporation present them in accordance with subsection (b) of this Code section.

(b) The request must:

(1) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(2) State that, except for claims that are contingent at the time of the filing of the notice of intent to dissolve or that arise after the filing of the notice of intent to dissolve, a claim against the corporation not otherwise barred will be barred unless a proceeding to enforce the claim is commenced within two years after publication of the notice.

(c) If a corporation that has filed a notice of intent to dissolve publishes a newspaper notice containing the information specified in subsection (b) of this Code section, all claims not otherwise barred will be barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two years after the publication date of the newspaper notice except:

(1) Claims that are contingent at the time of the filing of the notice of intent to dissolve; and

(2) Claims that arise after the filing of the notice of intent to dissolve.

(d) If a corporation in dissolution publishes a newspaper notice containing the information specified in subsection (b) of this Code section, a claim against the corporation not otherwise barred of a claimant whose claim is contingent or based on an event occurring after the filing of the notice of intent to dissolve is barred against the corporation, its members, officers, directors, and distributees unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two years after the date of filing of articles of dissolution or five years after the date of publication in accordance with subsection (b) of this Code section, whichever

is later.

(e) Subject to the provisions of this Code section, a claim against a corporation in dissolution or against a dissolved corporation may be enforced under this Code section:

(1) Against the corporation, to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against a distributee of the corporation to the extent of such distributee's pro rata share of the claim or the corporate assets distributed to him or her in liquidation, whichever is less, but a distributee's total liability for all claims under this Code section may not exceed the total amount of assets distributed to him or her.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 57, eff. July 1, 2004](#).

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→ **§ 14-3-1409. Articles of dissolution**

(a) If a notice of intent to dissolve under [Code Section 14-3-1404](#) has not been revoked, when all known debts, liabilities, and obligations of the corporation have been paid and discharged, or adequate provision made therefor, the corporation may dissolve by delivering to the Secretary of State for filing articles of dissolution setting forth:

(1) The name of the corporation;

(2) The date on which a notice of intent to dissolve was filed and a statement that it has not been revoked;

(3) A statement that all known debts, liabilities, and obligations of the corporation have been paid and discharged, or that adequate provision has been made therefor;

(4) A statement that all remaining property and assets of the corporation have been distributed in accordance with the plan of dissolution, or that such property and assets have been deposited with the Office of Treasury and Fiscal Services as provided in [Code Section 14-3-1440](#);

(5) A statement that there are no actions pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending action; and

(6) A statement that, if required, it notified the Attorney General of its intent to dissolve.

(b) Upon filing of articles of dissolution the corporation shall cease to exist, except for the purpose of actions or other proceedings, which may be brought against the corporation by service upon any of its last executive officers named in its last annual registration, and except for such actions as the members, directors, and officers take to protect any remedy, right, or claim on behalf of the corporation, or to defend, compromise, or settle any claim against the corporation, all of which may proceed in the corporate name.

(c) Deeds or other transfer instruments requiring execution after the dissolution of a corporation may be signed

by any two of the last officers or directors of the corporation and shall operate to convey the interest of the corporation in the real estate or other property described.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 2001, p. 796, § 4.

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→ **§ 14-3-1410. Revivor of corporate existence**

(a) A corporation that has been dissolved by the expiration of its period of duration but which has continued in business notwithstanding the expiration may revive its corporate existence by amending its articles of incorporation at any time during a period of ten years immediately following the expiration date fixed by the articles of incorporation, so as to extend its period of duration.

(b) If a corporation whose period of duration has expired has failed to revive its corporate existence within ten years of the expiration date fixed by its articles of incorporation as provided in subsection (a) of this Code section, the corporation may thereafter revive its corporate existence by amending its articles of incorporation so as to extend its period of duration at any time during the period beginning ten years and ending 20 years immediately following the expiration date fixed by its articles of incorporation and filing with the Secretary of State an affidavit attested by one or more of its officers or directors, stating as follows:

(1) That the corporation has continued in business, notwithstanding the expiration of its period of duration, at all times since the expiration date fixed by its articles of incorporation; and

(2) That the revival will not injure the corporation's members, creditors, or the public.

(c) As of the effective date of the amendment of articles of incorporation pursuant to subsection (a) or (b) of this Code section, the corporate existence shall be deemed to have continued without interruption from the former expiration date. If, during the period between expiration and revival, the name of the corporation has been assumed, reserved, or registered by any other person or corporation, the revived corporation shall not engage in business until it has amended its articles of incorporation to change its name.

CREDIT(S)

Laws 1991, p. 465, § 1.

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➔ **§ 14-3-1409.1. Effect of dissolution on other remedies**

The dissolution of a corporation in any manner, except by a decree of the superior court when the court has supervised the liquidation of the assets and business of the corporation as provided in [Code Section 14-3-1430](#) and [14-3-1433](#), shall not take away or impair any remedy available to such corporation, its directors, officers, or members for any right or claim existing prior to such dissolution if action or other proceeding thereon is pending on the date of such dissolution or is commenced within two years after the date of such dissolution. Any such action or proceeding by the corporation may be prosecuted by the corporation in its corporate name. The members, directors, and officers shall have the power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim.

CREDIT(S)

[Laws 2004, Act 533, § 58, eff. July 1, 2004.](#)

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→ **§ 14-3-1420. Grounds for administrative dissolution**

The Secretary of State may commence a proceeding under [Code Section 14-3-1421](#) to dissolve a corporation administratively if:

- (1) The state revenue commissioner has certified to the Secretary of State that the corporation has failed to file a license or occupation tax return and that a period of one year has expired since the last day permitted for timely filing without the filing and payment of all required license and occupation taxes and penalties by the corporation; provided, however, that dissolution proceedings shall be stayed so long as the corporation is contesting, in good faith, in any appropriate proceeding, the alleged grounds for dissolution;
- (2) The corporation does not deliver its annual registration to the Secretary of State, together with all required fees and penalties, within 60 days after it is due;
- (3) The corporation is without a registered agent or registered office in this state for 60 days or more;
- (4) The corporation does not notify the Secretary of State within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or
- (5) The corporation pays a fee as required to be collected by the Secretary of State pursuant to the Code by a check or some other form of payment which is dishonored and the corporation or its incorporator or its agent does not submit payment for said dishonored payment within 60 days from notice of nonpayment issued by the Secretary of State.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1993, p. 1231, § 28.

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→ **§ 14-3-1421. Procedure for and effect of administrative dissolution**

(a) If the Secretary of State determines that one or more grounds exist under [Code Section 14-3-1420](#) for dissolving a corporation, he shall provide the corporation with written notice of his determination by mailing a copy of the notice, first-class mail, to the corporation at the last known address of its principal office or to the registered agent.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within 60 days after notice is provided to the corporation, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under [Code Section 14-3-1406](#). Winding up the business of a corporation that has been administratively dissolved may include the corporation's proceeding, at any time after the effective date of the administrative dissolution, (1) in accordance with [Code Section 14-3-1407](#) to notify known claimants, and (2) to mail or deliver, with accompanying payment of the cost of publication, a notice containing the information specified in subsection (b) of [Code Section 14-3-1408](#) for publication. Upon such notice, claims against the administratively dissolved corporation will be limited as specified in [Code Sections 14-3-1407](#) and [14-3-1408](#), respectively.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

CREDIT(S)

Laws 1991, p. 465, § 1.

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→ **§ 14-3-1422. Reinstatement following administrative dissolution**

(a) A corporation administratively dissolved under [Code Section 14-3-1421](#) may apply to the Secretary of State for reinstatement within five years after the effective date of such dissolution. The application shall:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) Either be executed by the registered agent or an officer, director, or shareholder of the corporation, in each case as set forth in the most recent annual registration of the corporation filed with the Secretary of State, or be accompanied by a notarized statement, executed by a person who was an officer, director, or shareholder, or an heir, successor, or assign of a person who was an officer, director, or shareholder, of the corporation at the time that the corporation was administratively dissolved, stating that such person or decedent was an officer, director, or shareholder of the corporation at the time of administrative dissolution and such person has knowledge of and assents to the application for reinstatement;

(4) Contain a statement by the corporation reciting that all taxes owed by the corporation have been paid; and

(5) Be accompanied by an amount equal to the total annual registration fees and penalties that would have been payable during the periods between dissolution and reinstatement, plus the fee required for the application for reinstatement, and any other fees and penalties payable for earlier periods.

(b) The Secretary of State shall reserve the name of a corporation administratively dissolved under [Code Section 14-2-1421](#) for such corporation's specific use for a period of five years after the effective date of the dissolution or until the corporation is reinstated, whichever is sooner.

(c) If the Secretary of State determines that the application contains the information required by subsection (a) of this Code section and that the information is correct, the Secretary of State shall prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under [Code Section 14-3-504](#).

(d) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

(e) This Code section shall apply to all corporations administratively dissolved under [Code Section 14-3-1421](#) or any similar former statute, regardless of the date of dissolution.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1995, p. 975, § 2; Laws 1997, p. 1165, § 18.1; [Laws 2008, Act 452, § 9, eff. July 1, 2008](#).

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→ **§ 14-3-1423. Appeal from denial of reinstatement**

(a) If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution, he shall serve the corporation under [Code Section 14-3-504](#) with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the superior court of the county where the corporation's registered office is or was located within 30 days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.

(c) The court's final decision may be appealed as in other civil proceedings.

CREDIT(S)

Laws 1991, p. 465, § 1.

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▣ [Part 3.](#) Judicial Dissolution

→ **§ 14-3-1430. Grounds for judicial dissolution**

The superior court may dissolve a corporation:

(1) In a proceeding by the Attorney General if it is established that:

(A) The corporation obtained its articles of incorporation through fraud; or

(B) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) In a proceeding by a member if it is established that:

(A) The directors are deadlocked in the management of the corporate affairs, the members are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the members generally, because of the deadlock;

(B) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal or fraudulent in connection with the operation or management of the business and affairs of the corporation;

(C) The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired; or

(D) The corporate assets are being misapplied or wasted;

(3) In a proceeding by a creditor if it is established that:

(A) The creditor's claim has been reduced to judgment, the execution on the judgment has been returned un-

satisfied, and the corporation is insolvent; or

(B) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision;

provided, however, that all of the actions described in paragraphs (1) through (3) of this Code section shall be stayed so long as the corporation is contesting, in good faith, in any appropriate proceeding, the alleged grounds for dissolution.

CREDIT(S)

Laws 1991, p. 465, § 1.

Current through the 2009 Regular Session.

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→ **§ 14-3-1431. Procedure for judicial dissolution**

(a) Venue for a proceeding by the Attorney General to dissolve a corporation and for a proceeding brought by any other party named in [Code Section 14-3-1430](#) lies in the county where a corporation's registered office is or was last located.

(b) It is not necessary to make members or directors parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

CREDIT(S)

Laws 1991, p. 465, § 1.

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→ **§ 14-3-1432. Receivership or custodianship**

(a) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.

(b) The court may appoint an individual or a domestic or foreign corporation (authorized to transact business in this state) as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(1) The receiver:

(A) 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

(B) May sue and defend in his own name as receiver of the corporation in all courts of this state; or

(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

(d) The court, during a receivership, may redesignate the receiver a custodian and, during a custodianship, may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its members, and creditors.

(e) The court from time to time during the receivership or custodianship may order compensation paid and ex-



pense disbursements or reimbursements made to the receiver or custodian and his attorney from the assets of the corporation or proceeds from the sale of the assets.

CREDIT(S)

Laws 1991, p. 465, § 1.

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▣ [Part 3](#). Judicial Dissolution

→ **§ 14-3-1433. Decree of dissolution**

(a) If after a hearing the court determines that one or more grounds for judicial dissolution described in [Code Section 14-3-1430](#) exist, it may enter a decree ordering the corporation dissolved, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it, with the same effect as a notice of intent to dissolve.

(b) After entering the order of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with [Code Section 14-3-1406](#). Winding up the business of a corporation judicially dissolved may include the corporation's proceeding, after the date of the order of dissolution, (1) in accordance with [Code Section 14-3-1407](#) to notify known claimants, and (2) to mail or deliver, with accompanying payment of the cost of publication, a notice containing the information specified in subsection (b) of [Code Section 14-3-1408](#) for publication. Upon such notice, claims against the dissolved corporation will be limited as specified in [Code Sections 14-3-1407](#) and [14-3-1408](#) respectively.

(c) When the costs and expenses of dissolution proceedings and all debts, obligations, and liabilities of the corporation have been paid and discharged or provided for and all of its remaining assets distributed to its members or provided for or such assets have been deposited with the Office of Treasury and Fiscal Services as provided in [Code Section 14-3-1440](#), the court shall enter a decree of dissolution, and upon filing of the decree with the Secretary of State, it shall have the same effect as articles of dissolution.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 2001, p. 796, § 5.

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→ **§ 14-3-1440. Deposit with Office of Treasury and Fiscal Services**

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the Office of Treasury and Fiscal Services for safekeeping. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited, the Office of Treasury and Fiscal Services shall pay him or her or his or her representative that amount. After the Office of Treasury and Fiscal Services has held the unclaimed cash for six months, the Office of Treasury and Fiscal Services shall pay such cash to the Board of Regents of the University System of Georgia, to be held without liability for profit or interest until a claim for such cash shall be filed with the Office of Treasury and Fiscal Services by the parties entitled thereto. No such claim shall be made more than six years after such cash is deposited with the Office of Treasury and Fiscal Services.

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Laws 1991, p. 465, § 1; Laws 2001, p. 796, § 6.

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→ **§ 14-3-1501. Authority to transact business required**

(a) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a) of this Code section:

- (1) Maintaining or defending any action or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;
- (2) Holding meetings of its directors or members or carrying on other activities concerning its internal affairs;
- (3) Maintaining bank accounts, share accounts in savings and loan associations, custodian or agency arrangements with a bank or trust company, or stock or bond brokerage accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities or maintaining trustees or depositaries with respect to those securities;
- (5) Effecting sales through independent contractors;
- (6) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance outside this state before becoming binding contracts and where the contracts do not involve any local performance other than delivery and installation;
- (7) Making loans or creating or acquiring evidences of debt, mortgages, or liens on real or personal property, or recording same;
- (8) Securing or collecting debts or enforcing any rights in property securing the same;

(9) Owning, without more, real or personal property;

(10) Conducting an isolated transaction not in the course of a number of repeated transactions of a like nature;

(11) Effecting transactions in interstate or foreign commerce;

(12) Serving as trustee, executor, administrator, or guardian, or in like fiduciary capacity, where permitted so to serve by the laws of this state;

(13) Owning directly or indirectly an interest in or controlling directly or indirectly another entity organized under the laws of or transacting business within this state; or

(14) Serving as a manager of a limited liability company organized under the laws of or transacting business within this state.

(c) The list of activities in subsection (b) of this Code section is not exhaustive.

(d) This chapter shall not be deemed to establish a standard for activities which may subject a foreign corporation to taxation or to service of process under any of the laws of this state.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 59, eff. July 1, 2004](#).

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→ **§ 14-3-1502. Consequences of transacting business without authority**

(a) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state unless before the commencement of the proceeding the foreign corporation or its successor obtains a certificate of authority.

(c) Notwithstanding subsections (a) and (b) of this Code section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

CREDIT(S)

Laws 1991, p. 465, § 1.

Current through the 2009 Regular Session.

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→ **§ 14-3-1503. Application for certificate of authority**

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application must set forth:

- (1) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of [Code Section 14-3-1506](#);
  - (2) The name of the state or country under whose law it is incorporated;
  - (3) Its date of incorporation;
  - (4) The mailing address of its principal office;
  - (5) The address of its registered office in this state and the name of its registered agent at that office; and
  - (6) The names and respective business addresses of its chief executive officer, chief financial officer, and secretary, or individuals holding similar positions.
- (b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 2002, p. 989, § 10; [Laws 2004, Act 564, § 14, eff. May 13, 2004](#).

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→ **§ 14-3-1504. Amended certificate of authority**

(a) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the Secretary of State if it changes:

(1) Its corporate name;

(2) The period of its duration; or

(3) The state or country of its incorporation.

(b) The requirements of [Code Section 14-3-1503](#) for obtaining an original certificate of authority apply to obtaining an amended certificate under this Code section.

CREDIT(S)

Laws 1991, p. 465, § 1.

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→ **§ 14-3-1505. Effect of certificate of authority**

(a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.

(b) A foreign corporation with a valid certificate of authority has the same but no greater rights under this chapter and has the same but no greater privileges under this chapter as, and except as otherwise provided by this chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(c) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

CREDIT(S)

Laws 1991, p. 465, § 1.

Current through the 2009 Regular Session.

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→ **§ 14-3-1506. Corporate name of foreign corporation**

(a) If the corporate name of a foreign corporation does not satisfy the requirements of [Code Section 14-3-401](#), the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:

(1) May add the word “corporation,” “incorporated,” “company,” or “limited,” or the abbreviation “corp.,” “inc.,” “co.,” or “ltd.,” or the name of its state of incorporation to its corporate name for use in this state; or

(2) May use a fictitious or trade name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious or trade name.

(b) Except as authorized by subsections (c) and (d) of this Code section, a corporate name (including a fictitious name) of a foreign corporation must be distinguishable upon the records of the Secretary of State from:

(1) The corporate name of a corporation, whether for profit or not for profit, incorporated or authorized to transact business in this state;

(2) A corporate name reserved or registered under this chapter or Chapter 2 of this title;

(3) The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable; and

(4) The name of a limited partnership or professional association reserved or filed with the Secretary of State under this title.

(c) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation (incorporated or authorized to transact business in this state) that is not distinguishable upon his or her records from the name applied for. The Secretary of State shall authorize use of the name applied for if the other corporation files with the Secretary of State articles of amendment to its articles of incorporation changing its name to a name that is distinguishable upon the records of the Secretary of State from the name of

the applying corporation.

(d) A foreign corporation may use the name (including the fictitious name) of another domestic or foreign corporation whether for profit or not for profit that is used in this state if the other corporation is incorporated or authorized to transact business in this state and:

(1) The foreign corporation has merged with the other corporation;

(2) The foreign corporation has been formed by reorganization of the other corporation; or

(3) The other domestic or foreign corporation has taken the steps required by this chapter to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the foreign corporation applying to use its former name.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of [Code Section 14-3-401](#), it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of [Code Section 14-3-401](#) and obtains an amended certificate of authority under [Code Section 14-3-1504](#).

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 68\(9\)](#), eff. July 1, 2004; [Laws 2005, Act 19, § 14](#), eff. April 7, 2005.

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→ **§ 14-3-1507. Registered office and registered agent of foreign corporation**

Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(A) An individual who resides in this state and whose business office is identical with the registered office;

(B) A domestic corporation or domestic business corporation whose business office is identical with the registered office; or

(C) A foreign corporation or foreign business corporation authorized to transact business in this state whose business office is identical with the registered office.

CREDIT(S)

Laws 1991, p. 465, § 1.

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→ **§ 14-3-1508. Change of registered office or registered agent of foreign corporation**

(a) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing an amendment to its annual registration that sets forth:

(1) Its name;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of its new registered office;

(4) The name of its current registered agent; and

(5) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of his or her business office, he or she may change the street address of the registered office of any foreign corporation for which he or she is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing an amendment to the annual registration that complies with the requirements of subsection (a) of this Code section.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, §§ 66\(9\), 68\(10\), eff. July 1, 2004](#).

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→ **§ 14-3-1509. Resignation of registered agent of foreign corporation**

(a) The registered agent of a foreign corporation may resign his or her agency appointment by signing and delivering to the Secretary of State for filing a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) On or before the date of filing of the statement of resignation, the registered agent shall deliver or mail a written notice of the agent's intention to resign to the chief executive officer, chief financial officer, or secretary of the corporation, or a person holding a position comparable to any of the foregoing, as named, and at the address shown in the annual registration, or in the articles of incorporation if no annual registration has been filed.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the earlier of the filing by the corporation of an amendment to its annual registration designating a new registered agent and registered office if also discontinued or the thirty-first day after the date on which the statement was filed.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 60, eff. July 1, 2004](#).

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→ **§ 14-3-1510. Service on foreign corporation**

(a) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of any process, notice, or demand required or permitted by law to be served on the foreign corporation.

(b) If a foreign corporation has no registered agent or its registered agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail or statutory overnight delivery, return receipt requested, addressed to the chief executive officer, chief financial officer, or secretary of the foreign corporation, or a person holding a position comparable to any of the foregoing, at its principal office shown in the later of its application for a certificate of authority or its most recent annual registration. Any party that serves a foreign corporation in accordance with this subsection shall also serve a copy of the process upon the Secretary of State and shall pay a \$ 10.00 filing fee.

(c) Service is perfected under subsection (b) of this Code section at the earliest of:

(1) The date the foreign corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the foreign corporation; or

(3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(d) This Code section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

(e) For service in a proceeding to enforce any obligation of a domestic corporation party to a merger, see subsection (b) of [Code Section 14-3-1106](#).

CREDIT(S)



Laws 1991, p. 465, § 1; Laws 2000, p. 1589, § 3; Laws 2002, p. 989, § 11.

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→ **§ 14-3-1520. Withdrawal of foreign corporation**

(a) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State. A foreign corporation authorized to transact business in this state that merges with and into a domestic corporation pursuant to [Code Section 14-3-1106](#) and is not the surviving corporation in such merger need not obtain a certificate of withdrawal from the Secretary of State.

(b) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

- (1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;
- (2) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;
- (3) That it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;
- (4) A mailing address to which a copy of any process served on the Secretary of State under paragraph (3) of this subsection may be mailed under subsection (c) of this Code section; and
- (5) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(c) After the withdrawal of the corporation is effective, service of process on the Secretary of State under this Code section is service on the foreign corporation. Any party that serves process upon the Secretary of State in accordance with this subsection shall also mail a copy of the process to the chief executive officer, chief financial officer, or the secretary of the foreign corporation, or a person holding a comparable position, at the mailing address set forth under subsection (b) of this Code section.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 61, eff. July 1, 2004](#).

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→ **§ 14-3-1530. Grounds for revocation**

The Secretary of State may commence a proceeding under [Code Section 14-3-1531](#) to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

- (1) The foreign corporation does not deliver its annual registration to the Secretary of State within 60 days after it is due;
- (2) The foreign corporation does not pay within 60 days after they are due any fees, taxes, or penalties imposed by this chapter or other law;
- (3) The foreign corporation is without a registered agent or registered office in this state for 60 days or more;
- (4) The foreign corporation does not inform the Secretary of State under [Code Section 14-3-1508](#) or [14-3-1509](#) that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance;
- (5) An incorporator, director, officer, or agent of the foreign corporation signed a document he or she knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;  
or
- (6) The Secretary of State receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 66\(10\)](#), eff. July 1, 2004.

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→ **§ 14-3-1531. Procedure for and effect of revocation**

(a) If the Secretary of State determines that one or more grounds exist under [Code Section 14-3-1530](#) for revocation of a certificate of authority, he or she shall provide the foreign corporation with written notice of his or her determination by mailing a copy of the notice, by first-class mail, to the foreign corporation at the last known address of its principal office or to the registered agent.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within 60 days after notice is provided to the corporation, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date.

(c) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) The Secretary of State's revocation of a foreign corporation's certificate of authority appoints the Secretary of State as the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the Secretary of State under this subsection is service on the foreign corporation. Any party that serves process upon the Secretary of State shall also mail a copy of the process to the chief executive officer, chief financial officer, or the secretary of the foreign corporation, or a person holding a comparable position, at its principal office shown in its most recent annual registration or in any subsequent communication received by the Secretary of State from the corporation stating the current mailing address of its principal office, or, if none is on file, in its application for a certificate of authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, §§ 66\(11\), 68\(11\), eff. July 1, 2004](#).

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→ **§ 14-3-1532. Appeal from revocation**

(a) A foreign corporation may appeal the Secretary of State's revocation of its certificate of authority to the Superior Court of Fulton County within 30 days after service of the certificate of revocation is perfected under [Code Section 14-3-1510](#). The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Secretary of State's certificate of revocation.

(b) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

CREDIT(S)

Laws 1991, p. 465, § 1.

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➔ **§ 14-3-1540. Application to foreign corporations domesticated under former law**

(a) A foreign corporation which prior to April 1, 1969, has domesticated in this state under the procedure available prior to that date and which is a domesticated foreign corporation on that date shall have perpetual duration as a domesticated foreign corporation of this state unless its existence is terminated in its jurisdiction of incorporation or its domesticated status is dissolved in accordance with the provisions of this chapter relating to involuntary dissolution or until such time as it withdraws from this state in the manner provided in this chapter. Such domesticated foreign corporations and the members thereof shall have all the rights, privileges, and immunities and be subject to all the duties, liabilities, and disabilities applicable to similar corporations organized under the laws of this state and applicable to the members thereof, except as may be provided with respect to such domesticated foreign corporations by any of the laws of this state existing on April 1, 1969, or coming into existence thereafter.

(b) Whenever the term “foreign corporation authorized to transact business in this state” is used in this chapter, it shall be deemed to include domesticated foreign corporations, except where the context or this chapter otherwise requires.

CREDIT(S)

Laws 1991, p. 465, § 1.

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→ **§ 14-3-1601. Corporate records**

(a) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, executed consents evidencing all actions taken by the members or board of directors without a meeting, a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation, and waivers of notice of all meetings of the board of directors and its committees.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the name and address of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

CREDIT(S)

Laws 1991, p. 465, § 1.

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→ **§ 14-3-1602. Copies of records; inspection by member**

(a) A corporation shall keep a copy of the following records:

- (1) Its articles or restated articles of incorporation and all amendments to them currently in effect;
- (2) Its bylaws or restated bylaws and all amendments to them currently in effect;
- (3) Resolutions adopted by either its members or board of directors increasing or decreasing the number of directors or the classification of directors, or relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;
- (4) Resolutions adopted by either its members or board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;
- (5) The minutes of all meetings of members, executed waivers of notice of meetings, and executed consents, delivered in writing or by electronic transmission, evidencing all actions taken or approved by the members without a meeting, for the past three years;
- (6) All communications in writing or by electronic transmission to members generally within the past three years, including the financial statements furnished for the past three years under [Code Section 14-3-1620](#);
- (7) A list of the names and business or home addresses of its current directors and officers; and
- (8) Its most recent annual registration delivered to the Secretary of State under [Code Section 14-3-1622](#).

(b) A member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in subsection (a) of this Code section if the member gives the corporation written notice or a written demand at least five business days before the date on which the member wishes to inspect and copy.

(c) A member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (d) of this Code section and gives the corporation written notice at least five business days before the date on which the member wishes to inspect and copy:

(1) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the members, and records of action taken by the members or the board of directors without a meeting, to the extent not subject to inspection under subsection (a) of this Code section;

(2) Accounting records of the corporation; and

(3) Subject to [Code Section 14-3-1605](#), the membership list.

(d) A member may inspect and copy the records identified in subsection (c) of this Code section only if:

(1) The member's demand is made in good faith and for a proper purpose that is reasonably relevant to the member's legitimate interest as a member;

(2) The member describes with reasonable particularity the purpose and the records the member desires to inspect;

(3) The records are directly connected with this purpose; and

(4) The records are to be used only for the stated purpose.

(e) This Code section does not affect:

(1) The right of a member to inspect records under [Code Section 14-3-720](#) or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

(2) The power of a court, independently of this chapter, to compel the production of corporate records for examination.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 62, eff. July 1, 2004](#).

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→ **§ 14-3-1603. Scope of inspection right**

(a) A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.

(b) The right to copy records under [Code Section 14-3-1602](#) includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(c) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

(d) A corporation shall convert into written form without charge any record not in written form, upon written request of a person entitled to inspect it.

(e) The corporation may comply with a member's demand to inspect the record of members under paragraph (3) of subsection (c) of [Code Section 14-3-1602](#) by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-1604. Court-ordered inspection**

(a) If a corporation does not allow a member who complies with subsection (b) of [Code Section 14-3-1602](#) to inspect and copy any records required by that subsection to be available for inspection, the superior court may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(b) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with subsections (b) and (c) of [Code Section 14-3-1602](#) may apply to the superior court for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs (including reasonable attorneys' fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

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Laws 1991, p. 465, § 1.

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→ **§ 14-3-1605. Membership list**

Without consent of the board, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board a membership list or any part thereof may not be:

- (1) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;
- (2) Used for any commercial purpose; or
- (3) Sold to or purchased by any person.

CREDIT(S)

Laws 1991, p. 465, § 1.

Current through the 2009 Regular Session.

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▣ [Part 2](#). Reports

→ **§ 14-3-1620. Financial statements**

(a) A corporation upon request in writing or by electronic transmission from a member shall furnish that member its latest prepared annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, in reasonable detail as appropriate, that include a balance sheet as of the end of the fiscal year and statement of operations for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If annual financial statements are reported upon by a public accountant, the accountant's report must accompany them. If not, the statements must be accompanied by the statement of the president or the person responsible for the corporation's financial accounting records:

(1) Stating the president's or other person's reasonable belief as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 63, eff. July 1, 2004](#).

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→ **§ 14-3-1621. Report of indemnification or advance to director**

If a corporation indemnifies or advances expenses to a director under [Code Section 14-3-851](#), [14-3-852](#), [14-3-853](#), or [14-3-854](#) in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members.

CREDIT(S)

Laws 1991, p. 465, § 1.

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▢ [Part 2](#). Reports

→ **§ 14-3-1622. Annual registration for Secretary of State**

- (a) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the Secretary of State for filing an annual registration that sets forth:
- (1) The name of the corporation and the state or country under whose law it is incorporated;
  - (2) The street address and county of its registered office and the name of its registered agent at that office in this state;
  - (3) The mailing address of its principal office, if any; and
  - (4) The names and respective addresses of its chief executive officer, chief financial officer, and secretary, or individuals holding similar positions.
- (b) Information in the annual registration must be current as of the date the annual registration is executed on behalf of the corporation.
- (c) The first annual registration must be delivered to the Secretary of State between January 1 and April 1, or such other date as the Secretary of State may specify by rules or regulations, of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual registrations must be delivered to the Secretary of State between January 1 and April 1, or such other date as the Secretary of State may specify by rules or regulations, of the following calendar years.
- (d) The initial annual registration of a domestic corporation shall be filed within 90 days after the day its articles of incorporation are delivered to the Secretary of State for filing. However, the initial annual registration of a domestic corporation whose articles of incorporation are delivered to the Secretary of State for filing subsequent to October 1 shall be filed between January 1 and April 1 of the year next succeeding the calendar year in which its certificate of incorporation is issued by the Secretary of State.
- (e) If an annual registration does not contain the information required by this Code section, the Secretary of

State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this Code section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

CREDIT(S)

Laws 1991, p. 465, § 1; Laws 1993, p. 1231, § 29; Laws 1999, p. 405, § 21.

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▣ [Article 17. Applicability](#)

→ **§ 14-3-1701. Application**

(a) Subject to the limitations of subsection (b) of this Code section, this chapter shall apply:

(1) To all nonprofit corporations, existing on or formed after July 1, 1991, including nonprofit corporations organized under any prior general corporation law of this state or under Chapter 3 of Title 14 of the Official Code of Georgia Annotated in effect prior to July 1, 1991, that is repealed by this chapter;

(2) To all nonprofit corporations created by special Act of the General Assembly as to which power has been reserved to withdraw the franchise;

(3) To any nonprofit corporation, organization, or association, to the extent that the former general corporation law of this state or any of its provisions or this chapter or any of its provisions specifically have been or shall be made applicable to such corporation, organization, or association; and

(4) To any corporation organized under any statute of this state or if it were originally created by special Act of the General Assembly without reservation of power to withdraw the franchise, if under any prior general corporation law of this state applicable to nonprofit corporations such corporation either has amended its charter or has been a party to a merger or a consolidation, and also to any such corporation which after July 1, 1991, in an amendment to its articles of incorporation or restatement of the articles of incorporation or in a merger or a consolidation, elects to be subject to this chapter. Any such corporation shall have all the rights, privileges, franchises, immunities, and powers and shall be subject to all the duties, liabilities, and disabilities of a corporation to which this chapter applies as well as of the statute or special Act by which such corporation was originally created; but in the event of a conflict between such statute or special Act and this chapter, such statute or special Act shall govern.

(b) This chapter shall not apply:

(1) To corporations organized under a statute of this state other than either this chapter or any prior general corporation law, except to the extent that the former general corporation law of this state applicable to nonprofit corporations or any of its provisions or this chapter or any of its provisions specifically have been or shall be made applicable to such corporations;

(2) To any corporation originally created by special Act of the General Assembly as to which power has not been reserved to withdraw the franchise, except as otherwise provided in subsection (a) of this Code section;

(3) To any corporation originally created by special Act of the General Assembly as to which power has been reserved to withdraw the franchise, if the purpose of the corporation would require its organization to take place under a statute other than this chapter, if it were being organized after July 1, 1991, except to the extent that the former general corporation law of this state or any of its provisions or this chapter or any of its provisions specifically have been or shall be made applicable to corporations organized for that purpose;

(4) To any public authority created by special Act of the General Assembly, except to the extent that the former general corporation law of this state or any of its provisions or this chapter or any of its provisions specifically have been or shall be made applicable to such public authority; or

(5) To corporations of any class to the extent that such class is specifically exempted from this chapter or any of its provisions.

(c) This chapter shall not impair the existence of any nonprofit corporation existing on July 1, 1991. Subject to [Code Section 14-3-610](#), any such existing corporation to which this chapter is applicable and its members, directors, and officers shall have the same rights and be subject to the same limitations, restrictions, liabilities, and penalties as a corporation formed under this chapter and its members, directors, and officers.

(d) If the articles of incorporation, charter, or bylaws of a corporation in existence on July 1, 1991, contain any provisions that were not authorized or permitted by the prior general corporation law of this state but which are authorized or permitted by this chapter, the provisions of the articles of incorporation, charter, or bylaws shall be valid on and from that date, and action may be taken on and from that date in reliance on those provisions. If the articles of incorporation, charter, or bylaws of a corporation in existence on July 1, 1991, contain any provisions that were authorized or permitted by the prior nonprofit corporation law of this state, that were validly adopted under the law in effect at the time of their adoption, and that are authorized or permitted by this chapter, the provisions of the articles of incorporation, charter, or bylaws shall continue to be valid on and from that date, whether or not this chapter imposes requirements for the adoption of such provisions that are different from those in effect at the time the provisions were adopted.

(e) This chapter shall apply to commerce with foreign nations and among the several states only insofar as the application may be permitted under the Constitution and laws of the United States.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 64, eff. July 1, 2004](#); [Laws 2005, Act 19, § 14, eff. April 7, 2005](#).

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→ **§ 14-3-1702. Application to foreign corporations**

A foreign corporation transacting business in this state on or after July 1, 1991, is subject to this chapter. A foreign corporation that is authorized to transact business or conduct affairs in this state on July 1, 1991, is not required to obtain a new certificate of authority.

CREDIT(S)

Laws 1991, p. 465, § 1.

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▣ [Article 17. Applicability](#)

→ **§ 14-3-1703. Saving provisions**

(a) Except as provided in subsection (b) of this Code section, the repeal of a statute by this chapter does not affect:

(1) The operation of the statute or any action taken under it before its repeal;

(2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal; but the same, as well as actions that are pending on July 1, 1991, may be asserted, enforced, prosecuted, or defended as if the prior statute has not been repealed;

(3) Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;

(4) Transactions validly entered into before July 1, 1991, and the rights, duties, and interests flowing from them shall remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by any statute repealed by this chapter as though the repeal had not occurred;

(5) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed;

(6) Any provision of the articles of incorporation, charter, or bylaws of a corporation in existence on July 1, 1991, that was authorized or permitted by the prior nonprofit corporation law of this state, that was validly adopted under the law in effect at the time of its adoption, and that is authorized or permitted by this chapter; or

(7) Any meeting of members or directors or action by written consent noticed or any action taken before its repeal as a result of a meeting of members or directors or action by written consent.

(b) If a penalty or punishment imposed for violation of a statute repealed by this chapter is reduced by this chapter, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

CREDIT(S)

Laws 1991, p. 465, § 1; [Laws 2004, Act 533, § 65, eff. July 1, 2004](#).

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▣ [Article 6. Property Owners' Associations](#)

→ **§ 44-3-220. Short title**

This article shall be known and may be cited as the “Georgia Property Owners' Association Act.”

CREDIT(S)

Laws 1994, p. 1879, § 1.

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→ **§ 44-3-221. Definitions**

As used in this article, the term:

- (1) “Board of directors” or “board” means an executive and administrative body, by whatever name denominated, designated in the instrument as the governing body of the association.
- (2) “Common area” means all real and personal property submitted to the declaration which is owned or leased by the association for common use and enjoyment of the members.
- (3) “Common expenses” means all expenditures lawfully made or incurred by or on behalf of the association together with all funds lawfully assessed for the creation and maintenance of reserves pursuant to the provisions of the instrument.
- (4) “Court” means the superior court of the county where the development or any part thereof is located.
- (5) “Declarant” means all owners and lessees of the property who execute the declaration or on whose behalf the declaration is executed; provided, however, that the phrase “owners and lessees,” as used in this article, shall not include in his or her capacity as such any mortgagee, any lien holder, any person having an equitable interest under any contract for the sale or lease of a lot, or any lessee or tenant of a lot. From the time of the recordation of any amendment to the declaration expanding an expandable property owners' development, all persons who execute that amendment or on whose behalf that amendment is executed shall also come within the definition of “declarant.” Any successors-in-title of any owner or lessee referred to in this paragraph who comes to stand in the same relation to the property owners' development as his or her predecessor did shall also come within such definition.
- (6) “Declaration” means the recordable instrument creating covenants upon property which covenants are administered by a property owners' association in which membership is mandatory for all owners of lots in the property owners' development.
- (7) “Foreclosure” means, without limitation, the judicial foreclosure of a mortgage and the exercise of a power of sale contained in any mortgage.

(8) “Limited common areas” means a portion of the common area reserved for the exclusive use of those entitled to occupy one or more, but less than all, of the lots.

(9) “Lot” means any plot or parcel of land, other than a common area, designated for separate ownership and occupancy shown on a recorded subdivision plat for a development and subject to a declaration. Where the context indicates or requires, the term lot includes any structure on the lot. With respect to a property owners' development which includes a condominium, and to the extent provided for in the instrument, each condominium unit, as defined in paragraph (28) of [Code Section 44-3-71](#), shall be deemed a separate lot.

(10) “Lot owner” means one or more persons who are record title owners of a lot.

(11) “Mortgage” means a mortgage, deed to secure debt, deed of trust, or other instrument conveying a lien upon or security title to property.

(12) “Mortgagee” means the holder of a mortgage.

(13) “Officer” means an officer of the association.

(14) “Person” means a natural person, corporation, partnership, association, trust, other entity, or any combination thereof.

(15) “Property” means any real property and any interest in real property, including, without limitation, parcels of air space.

(16) “Property owners' association” or “association” means a corporation formed for the purpose of exercising the powers of the property owners' association created pursuant to this article.

(17) “Property owners' association instrument” or “instrument” means the declaration, plats, and plans recorded pursuant to this article. Any exhibit, schedule, or certification accompanying an instrument and recorded simultaneously therewith shall be deemed an integral part of that instrument. Any amendment or certification of any instrument shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the affected instrument so long as such amendment or certification was made in accordance with this article.

(18) “Property owners' development” or “development” means real property which contains lots and which may contain common area located within Georgia and subject to a declaration and submitted to this article.

#### CREDIT(S)

Laws 1994, p. 1879, § 1; [Laws 2004, Act 535, § 8, eff. July 1, 2004](#).

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→ **§ 44-3-222. Creation of property owners' developments**

A property owners' development shall come into existence upon either the recordation of the declaration pursuant to this article or the amendment of a recorded declaration in accordance with [Code Section 44-3-235](#). Any declaration or amendment intending to bring or avail a development of the benefits and provisions of this article shall state an affirmative election to be so governed. Any original declaration shall be duly executed by or on behalf of all of the owners of the submitted property. Any such amendment to an existing declaration shall be executed in accordance with the terms of the recorded declaration being amended thereby.

CREDIT(S)

Laws 1994, p. 1879, § 1.

Current through the 2009 Regular Session.

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→ **§ 44-3-223. Compliance with association instrument and rules and regulations; enforcement**

Every lot owner and all those entitled to occupy a lot shall comply with all lawful provisions of the property owners' association instrument. In addition, any lot owner and all those entitled to occupy a lot shall comply with any reasonable rules or regulations adopted by the association pursuant to the instrument which have been provided to the lot owners and with the lawful provisions of the bylaws of the association. Any lack of such compliance shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the association or, in any proper case, by one or more aggrieved lot owners on their own behalf or as a class action. If and to the extent provided in the instrument, the association shall be empowered to impose and assess fines and suspend temporarily voting rights and the right of use of certain of the common areas and services paid for as a common expense in order to enforce such compliance; provided, however, that no such suspension shall deny any lot owner or occupants access to the lot owned or occupied.

CREDIT(S)

Laws 1994, p. 1879, § 1.

Current through the 2009 Regular Session.

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→ **§ 44-3-224. Voting procedures**

(a) Since a lot owner may be more than one person, if only one of those persons is present at a meeting of the association, or is voting by proxy, ballot, or written consent, that person shall be entitled to cast the votes pertaining to that lot. However, if more than one of those persons is present, or executes a proxy, ballot, or written consent, the vote pertaining to that lot shall be cast only in accordance with their unanimous agreement unless the instrument expressly provides otherwise; and such consent shall be conclusively presumed if any one of them purports to cast the votes pertaining to that lot without protest being made immediately by any of the others to the person presiding over the meeting or vote.

(b) The votes pertaining to any lot may, and, in the case of any lot owner not a natural person or persons, shall, be cast pursuant to a proxy or proxies duly executed by or on behalf of the lot owner or, in cases where the lot owner is more than one person, by or on behalf of the joint owners of the lot. No such proxy shall be revocable except as provided in [Code Section 14-2-722](#) or [Code Section 14-3-724](#) or by written notice delivered to the association by the lot owner or by any joint owners of a lot. Any proxy shall be void if it is not dated or if it purports to be revocable without such notice.

CREDIT(S)

Laws 1994, p. 1879, § 1; [Laws 2004, Act 535, § 9, eff. July 1, 2004](#).

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➔ [§ 44-3-225. Assessments](#)

(a) To the extent that the instrument expressly so provides:

(1) Any common expenses benefiting less than all of the lots shall be specially assessed equitably among all of the lots so benefited, as determined by the board;

(2) Any common expenses occasioned by the conduct of less than all of those entitled to occupy all of the lots or by the licensees or invitees of any such lot or lots shall be specially assessed against the lot or lots, the conduct of any occupant, licensee, or invitee of which occasioned any such common expenses;

(3) Any common expenses significantly disproportionately benefiting all of the lots shall be assessed equitably among all of the lots in the development as determined by the board; and

(4) Other than for limited common areas expressly designated as such in the instrument and assigned to fewer than all lots, nothing contained in paragraph (1) or (3) of this subsection shall permit an association to specially or disproportionately allocate common expenses for periodic maintenance, repair, and replacement of any portion of the common area or the lots which the association has the obligation to maintain, repair, or replace.

(b) No lot owner other than the association shall be exempted from any liability for any assessment under this Code section or under any instrument for any reason whatsoever, including, without limitation, abandonment, nonuse, or waiver of the use or enjoyment of his or her lot or any part of the common area except to the extent that any lot, upon request by the owner of the lot, expressly may be made exempt from assessments and thus denied voting rights of the lot under the instrument until a certificate of occupancy is issued by the governing authority for a dwelling on such lot.

(c) Unless otherwise provided in the instrument and except as provided in subsection (d) of this Code section, the grantee in a conveyance of a lot shall be jointly and severally liable with the grantor thereof for all unpaid assessments against the latter up to the time of the conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee; provided, however, that if the grantor or grantee shall request a statement from the association as provided in subsection (d) of [Code Section 44-3-232](#), such grantee and his or her successors, successors-in-title, and assigns shall not be liable for nor shall the property owners' association

lot conveyed be subject to a lien for any unpaid assessments against such grantor in excess of any amount set forth in the statement.

(d) In the event that the holder of a first priority mortgage or secondary purchase money mortgage of record, provided that neither the grantee nor any successor grantee on the secondary purchase money mortgage is the seller of the lot, or in the event that any other person acquires title to any lot as a result of foreclosure of any such mortgage, such holder or other person and his or her successors, successors-in-title, and assigns shall not be liable for nor shall the lot be subject to any lien for assessments under this Code section or under any instrument chargeable to the lot on account of any period prior to the acquisition of title; provided, however, that the unpaid share of an assessment or assessments shall be deemed to be a common expense collectable from all of the lot owners, including such holder or other person and his or her successors, successors-in-title, and assigns.

CREDIT(S)

Laws 1994, p. 1879, § 1; [Laws 2004, Act 535, § 10, eff. July 1, 2004](#).

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▣ [Article 6. Property Owners' Associations](#)

→ **§ 44-3-226. Amendment of instrument**

(a) Except to the extent expressly permitted or required by other provisions of this article, the instrument shall be amended only by the agreement of lot owners of lots to which two-thirds of the votes in the association pertain or such larger majority as the instrument may specify; provided, however, that, during any such time as there shall exist an unexpired option to add any additional property to the property owners' association or during any such time as the declarant has the right to control the association under the instrument, the agreement shall be that of the declarant and the lot owners of lots to which two-thirds of the votes in the association pertain, exclusive of any vote or votes appurtenant to any lot or lots then owned by the declarant, or a larger majority as the instrument may specify. Notwithstanding any other provisions of this subsection, during such time as the declarant shall own at least one lot primarily for the purpose of sale of such lot, no amendment shall be made to the instrument without the written agreement of the declarant if such amendment would impose a greater restriction on the use or development by the declarant of the lot or lots owned by the declarant.

(b) No amendment of an instrument shall require approval of lot owners to which more than 80 percent of the association vote pertains and the mortgagees holding 80 percent of the voting interest of mortgaged lots; any property owners' association which exists prior to July 1, 1994, and amends its documents to avail itself of the provisions of this article shall be deemed to have amended the association instrument to conform to this limitation. This subsection shall not be deemed to eliminate or modify any right of the declarant provided for in the instrument to approve amendments to the instrument so long as the declarant owns any lot primarily for the purpose of sale and, furthermore, this Code section shall not be construed as modifying or altering the rights of a mortgagee set forth elsewhere in this article.

(c) Except to the extent expressly permitted or required by other provisions of this article, or agreed upon or permitted by the instrument concerning submission of additional property to this article by the declarant or the association, or agreed upon by all lot owners and the mortgagees of all lots, no amendment to the instrument shall change the boundaries of any lot, the number of votes in the association pertaining thereto, or the liability for common expenses pertaining thereto.

(d) Agreement of the required majority of lot owners to any amendment of the instrument shall be evidenced by their execution of the amendment. In the alternative, provided that the declarant does not then have the right to control the association pursuant to the instrument, the sworn statement of the president, of any vice president, or of the secretary of the association attached to or incorporated in an amendment executed by the association, which sworn statement states unequivocally that agreement of the required majority was otherwise lawfully ob-

tained and that all notices required by this article were properly given, shall be sufficient to evidence the required agreement. Any such amendment of the instrument shall become effective only when recorded or at such later date as may be specified in the amendment itself.

(e) Notwithstanding anything to the contrary in this article or in the instrument, the approval of any proposed amendment by a mortgagee shall be deemed implied and consented to if the mortgagee fails to submit a response to any written proposal for an amendment within 30 days after the mortgagee receives notice of the proposed amendment sent by certified mail or statutory overnight delivery, return receipt requested.

(f) In any court suit or action where the validity of the adoption of an amendment to an instrument is at issue, the adoption of the amendment shall be presumed valid if the suit is commenced more than one year after the recording of the amendment on the public record. In such cases, the burden of proof shall be upon the party challenging the validity of the adoption of the amendment.

CREDIT(S)

Laws 1994, p. 1879, § 1; Laws 1995, p. 10, § 44; Laws 2000, p. 1589, § 3.

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▣ [Article 6. Property Owners' Associations](#)

→ **§ 44-3-227. Incorporation of associations**

(a) Prior to submission to this article, the association shall be duly incorporated either as a business corporation under Chapter 2 of Title 14 or as a nonprofit membership corporation under Chapter 3 of Title 14, as amended. The corporate name of the association shall include the word or words “homeowners,” “property owners,” “community,” “club,” or “association” and shall otherwise comply with applicable laws regarding corporate names. The articles of incorporation of the association and the bylaws adopted by the association shall contain provisions not inconsistent with applicable law including but not limited to this article or with the declaration as may be required by this article or by the declaration and as may be deemed appropriate or desirable for the proper management and administration of the association. The term “member” shall include a shareholder in the event the association is a business corporation or issues stock. Membership shall continue during the period of ownership by such lot owner.

(b) Prior to the first conveyance of a property owners' association lot, the declarant shall cause the first board directors to be duly appointed, the officers to be elected, and the organization of the association to be effectuated.

(c) True and correct copies of the articles of incorporation and bylaws of the association and all amendments thereto shall be maintained at the principal and the registered offices of the association and at the sales office of the declarant so long as the declarant has the right to control the association pursuant to the instrument; and copies thereof shall be furnished to any lot owner on request upon payment of a reasonable charge therefor.

CREDIT(S)

Laws 1994, p. 1879, § 1; [Laws 2004, Act 535, § 11, eff. July 1, 2004.](#)

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▣ [Article 6. Property Owners' Associations](#)

→ **§ 44-3-228. Quorums and procedures at meetings**

Unless the instrument or bylaws provide otherwise, a quorum shall be deemed present throughout any meeting of the members of the association if persons entitled to cast more than one-third of the votes are present at the beginning of the meeting. Unless the instrument or bylaws specify a larger percentage, the presence of persons entitled to cast one-half of the votes of the board of directors shall constitute a quorum for the transaction of business at any meeting of the board.

CREDIT(S)

Laws 1994, p. 1879, § 1; [Laws 2004, Act 535, § 12, eff. July 1, 2004.](#)

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➔ **§ 44-3-229. Directors and officers**

If the instrument provides that any member of the board of directors or any officer of the association must be a lot owner, then, notwithstanding [Code Section 44-3-221](#), the term “lot owner” in such context shall, unless the instrument otherwise provides, be deemed to include, without limitation, any shareholder, director, officer, partner in, or trustee of any person who is, either alone or in conjunction with any other person or persons, a lot owner. Any individual who would not be eligible to serve as a member of the board of directors or officer were he or she not a shareholder, director, officer, partner in, or trustee of such a person shall be deemed to have disqualified himself or herself from continuing in office if he or she ceases to have any such affiliation with that person.

CREDIT(S)

Laws 1994, p. 1879, § 1.

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➔ **§ 44-3-230. Meetings; notice of meetings**

Meetings of the members of the association shall be held in accordance with the provisions of the association's bylaws and in any event shall be called not less frequently than annually. Notice shall be given to each lot owner at least 21 days in advance of any annual or regularly scheduled meeting and at least seven days in advance of any other meeting and shall state the time, place, and , for any special meeting, purpose of such meeting. Such notice shall be delivered personally or sent by United States mail, postage prepaid, statutory overnight delivery, or issued electronically in accordance with Chapter 12 of Title 10, the “Uniform Electronic Transactions Act,” to all lot owners of record at such address or addresses as designated by such lot owners or, if no other address has been so designated, at the address of their respective lots. At the annual meeting, comprehensive reports of the affairs, finances, and budget projections of the association shall be made to the lot owners.

CREDIT(S)

Laws 1994, p. 1879, § 1; Laws 1995, p. 10, § 44; [Laws 2004, Act 535, § 13, eff. July 1, 2004](#); [Laws 2009, Act 141, § 2, eff. July 1, 2009](#).

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→ **§ 44-3-231. Powers and duties of association**

(a) Except to the extent prohibited by the instrument and subject to any restrictions and limitations specified therein, the association shall have the power to:

(1) Employ, retain, dismiss, and replace agents and employees to exercise and discharge the powers and responsibilities of the association;

(2) Make or cause to be made additional improvements on and as a part of the common area; and

(3) Grant or withhold approval of any action by one or more lot owners or other persons entitled to occupancy of any lot if such action would change the exterior appearance of any lot, or any structure thereon, or of any other portion of the development or elect or provide for the appointment of an architectural control committee to grant or withhold such approval.

(b) Except to the extent prohibited by the instrument and subject to any restrictions and limitations specified therein, the association shall have the power to grant easements, leases, and licenses through or over the common area, to accept easements, leases, and licenses benefiting the development or any portion thereof, and to acquire or lease property in the name of the association. Property so acquired by the association upon the recordation of the deed thereto or other instrument granting the same and designating property as common area shall, for all purposes including without limitation taxation, be a part of the common area. The association shall also have the power to acquire, lease, and own in its own name property of any nature, real, personal, or mixed, tangible or intangible; to borrow money; and to pledge, mortgage, or hypothecate all or any portion of the property of the association for any lawful purpose within the association's inherent or expressly granted powers. Any third party dealing with the association shall be entitled to rely in good faith upon a certified resolution of the board of directors of the association authorizing any such act or transaction as conclusive evidence of the authority and power of the association so to act and of full compliance with all restraints, conditions, and limitations, if any, upon the exercise of such authority and power.

(c) The association shall have the power to amend the instrument, the articles of incorporation, and the bylaws of the association in such respects as may be required to conform to mandatory provisions of this article or of any other applicable law without a vote of the lot owners.

(d) In addition to any other duties and responsibilities as this article or the instrument may impose, the association shall keep:

- (1) Detailed minutes of all meetings of the members of the association and of the board of directors;
- (2) Detailed and accurate financial records, including itemized records of all receipts and expenditures; and
- (3) Any books and records as may be required by law or be necessary to reflect accurately the affairs and activities of the association.

(e) This Code section shall not be construed to prohibit the grant or imposition of other powers and responsibilities to or upon the association by the instrument.

(f) Except to the extent otherwise expressly required by this article, by Chapter 2 or 3 of Title 14, by the instrument, by the articles of incorporation, or by the bylaws of the association, the powers inherent in or expressly granted to the association may be exercised by the board of directors, acting through the officers, without any further consent or action on the part of the lot owners.

(g) A tort action alleging or founded upon negligence or willful misconduct by any agent or employee of the association or in connection with the conditions of any portion of the instrument which the association has the responsibility to maintain shall be brought against the association. No lot owner shall be precluded from bringing such an action by virtue of his membership in the association. A judgment against the association arising from a tort action shall be a lien against the assets of the association.

(h) The association shall have the capacity, power, and standing to institute, intervene, prosecute, represent, or defend in its own name litigation or administrative or other proceedings of any kind concerning claims or other matters relating to any portion of the lots or common area which the association has the responsibility to administer, repair, or maintain.

CREDIT(S)

Laws 1994, p. 1879, § 1.

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→ **§ 44-3-232. Liens for assessments**

(a) All sums lawfully assessed by the association against any lot owner or property owners' association lot, whether for the share of the common expenses pertaining to that lot, fines, or otherwise, and all reasonable charges made to any lot owner or lot for materials furnished or services rendered by the association at the owner's request to or on behalf of the lot owner or lot, shall, from the time the sums became due and payable, be the personal obligation of the lot owner and constitute a lien in favor of the association on the lot prior and superior to all other liens whatsoever except:

(1) Liens for ad valorem taxes on the lot;

(2) The lien of any first priority mortgage covering the lot and the lien of any mortgage recorded prior to the recording of the declaration; or

(3) The lien of any secondary purchase money mortgage covering the lot, provided that neither the grantee nor any successor grantee on the mortgage is the seller of the lot.

The recording of the declaration pursuant to this article shall constitute record notice of the existence of the lien, and no further recordation of any claim of lien for assessments shall be required.

(b) To the extent that the instrument provides, the personal obligation of the lot owner and the lien for assessments shall also include:

(1) A late or delinquency charge not in excess of the greater of \$ 10.00 or 10 percent of the amount of each assessment or installment thereof not paid when due;

(2) At a rate not in excess of 10 percent per annum, interest on each assessment or installment thereof and any delinquency or late charge pertaining thereto from the date the same was first due and payable;

(3) The costs of collection, including court costs, the expenses required for the protection and preservation of the lot, and reasonable attorney's fees actually incurred; and

(4) The fair rental value of the lot from the time of the institution of an action until the sale of the lot at foreclosure or until judgment rendered in the action is otherwise satisfied.

(c) Not less than 30 days after notice is sent by certified mail or statutory overnight delivery, return receipt requested, to the lot owner both at the address of the lot and at any other address or addresses which the lot owner may have designated to the association in writing, the lien may be foreclosed by the association by an action, judgment, and court order for foreclosure in the same manner as other liens for the improvement of real property, subject to superior liens or encumbrances, but any such court order for judicial foreclosure shall not affect the rights of holders of superior liens or encumbrances to exercise any rights or powers afforded to them under their security instruments. The notice provided for in this subsection shall specify the amount of the assessments then due and payable together with authorized late charges and the rate of interest accruing thereon. No foreclosure action against a lien arising out of this subsection shall be permitted unless the amount of the lien is at least \$2,000.00. Unless prohibited by the instrument, the association shall have the power to bid on the lot at any foreclosure sale and to acquire, hold, lease, encumber, and convey the same. The lien for assessments shall lapse and be of no further effect, as to assessments or installments thereof, together with late charges and interest applicable thereto, four years after the assessment or installment first became due and payable.

(d) Any lot owner, mortgagee of a lot, person having executed a contract for the purchase of a lot, or lender considering the loan of funds to be secured by a lot shall be entitled upon request to a statement from the association or its management agent setting forth the amount of assessments past due and unpaid together with late charges and interest applicable thereto against that lot. Such request shall be in writing, shall be delivered to the registered office of the association, and shall state an address to which the statement is to be directed. Failure on the part of the association, within five business days from the receipt of such request, to mail or otherwise furnish such statement regarding amounts due and payable at the expiration of such five-day period with respect to the lot involved to such address as may be specified in the written request therefor shall cause the lien for assessments created by this Code section to be extinguished and of no further force or effect as to the title or interest acquired by the purchaser or lender, if any, as the case may be, and their respective successors and assigns, in the transaction contemplated in connection with such request. The information specified in such statement shall be binding upon the association and upon every lot owner. Payment of a fee not exceeding \$ 10.00 may be required as a prerequisite to the issuance of such a statement if the instrument so provides.

(e) Nothing in this Code section shall be construed to prohibit actions maintainable pursuant to [Code Section 44-3-223](#) to recover sums for which subsection (a) of this Code section creates a lien.

#### CREDIT(S)

Laws 1994, p. 1879, § 1; Laws 1995, p. 10, § 44; Laws 2000, p. 1589, § 3; [Laws 2004, Act 535, § 14, eff. July 1, 2004](#); [Laws 2005, Act 19, § 44, eff. April 7, 2005](#); [Laws 2008, Act 776, § 2, eff. July 1, 2008](#).

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→ **§ 44-3-233. Construction of law**

The provisions of this article and of an instrument recorded pursuant thereto shall be liberally construed in favor of the valid establishment of property owners' association pursuant to this article with respect to the submitted property. Substantial compliance with the requirements of this article for the establishment of a property owners' association shall suffice to being property described in an instrument recorded pursuant to this article within the purview and application of this article; and any defects in such instrument or want of conformity with this article may be cured by an amendment thereto duly executed by the association and recorded or, upon application of any lot owner, with notice to the declarant, the association, and all other lot owners, by decree of the court.

CREDIT(S)

Laws 1994, p. 1879, § 1.

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➔ **§ 44-3-234. Certain limitations not applicable to covenants**

The limitations provided in subsection (b) and paragraphs (1), (2), and (4) of subsection (d) of [Code Section 44-5-60](#) shall not apply to any covenants contained in any instrument created pursuant to or submitted to this article.

CREDIT(S)

Laws 1994, p. 1879, § 1.

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→ **§ 44-3-235. Applicability of law**

(a) This article shall apply to all property which is submitted to this article. This article shall also apply to any association of owners subject to a recorded declaration of covenants upon property, which covenants are administered by an owners' association in which membership is mandatory for all owners of lots in the development, which declaration is amended in accordance with [Code Section 44-3-222](#) in order to submit the property owners' association to this article; provided, however, that any amendment must conform the instrument creating the property owners' association to this article, and the property owners' development shall thereafter be deemed to be submitted to this article.

(b) This article shall not apply to associations created pursuant to Article 3 of this chapter, the “Georgia Condominium Act,” except to the extent that a property owners' development created under this article includes a condominium, together with other real property, as provided in paragraph (9) of [Code Section 44-3-221](#).

(c) This article shall not be construed to affect the validity of any instrument recorded before or after July 1, 1994, but benefits derived from or based upon this article may only be claimed by developments submitted to this article.

CREDIT(S)

Laws 1994, p. 1879, § 1; [Laws 2004, Act 535, § 15, eff. July 1, 2004](#).

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